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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAY 02 2012** OFFICE: CALIFORNIA SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, (“the director”) denied the employment-based immigrant visa petition. The petitioner timely filed an appeal to the denied petition. The Administrative Appeals Office (“AAO”) summarily dismissed the appeal. The matter is currently before the AAO on a motion to reopen and a motion to reconsider. The motion to reopen and the motion to reconsider will be denied.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a minister. On May 19, 2010, the petitioner filed a Form I-360 petition. On June 17, 2010, the director denied the petition. The director determined that the petitioner had not established that the beneficiary worked continuously in a qualified religious occupation or vocation for two full years preceding the filing of the petition. The petitioner timely filed an appeal to the AAO. Counsel did not submit a brief with the appeal. Instead, counsel indicated that she would submit a brief to the AAO within thirty days. However, there was no additional brief or evidence in the record of proceeding for the AAO to consider on appeal. Therefore, on September 16, 2010, the AAO summarily dismissed the appeal because the petitioner failed to identify specifically any erroneous conclusion of law or a statement of fact in this proceeding.

On October 14, 2010, the petitioner timely filed a motion to reopen and a motion to reconsider the AAO’s decision. The petitioner contends that the AAO’s decision was incorrect based on an incorrect application of law or Service policy. The petitioner argues that the AAO incorrectly summarily dismissed the petition because the petitioner submitted a brief on July 31, 2010, which was received by the AAO on August 3, 2010. The petitioner submitted a customer receipt from the United States Postal Service (“USPS”) with a copy of petitioner’s brief.

The regulation at 8 C.F.R. § 103.5(a)(2) sets forth that “[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.”

The regulation at 8 C.F.R. § 103.5(a)(3) states that “A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.”

Counsel’s claim that she properly submitted the brief to the AAO is not supported by the information on the USPS website. The AAO reviewed the customer receipt; the tracking number on this receipt is [REDACTED]. On the USPS website, the status of this envelope was “Delivered. Your item was delivered at 10:20 am on August 3, 2010 [REDACTED].” A copy of the USPS website page containing the information on this tracking number will be incorporated into the record of proceeding.¹

¹ See <https://tools.usps.com/go/TrackConfirmAction.action>, accessed March 21, 2011

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

General. Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter . . . must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations

....

Further, the regulations at 8 C.F.R. §§ 103.3(a)(2)(vi) and (viii) provide:

Brief. The affected party may submit a brief with the Form I-290B.

Where to submit supporting brief if additional time is granted. If the AA[O] grants additional time, the affected party shall submit the brief directly to the AA[O].”

Finally, regarding the submission of a brief after the filing of the appeal, page two of the Form I-290B instructions specifically states²:

APPEALS

1. Brief

You do not need to submit a brief in support of your appeal, but you may submit one if you choose. You may also submit additional evidence. Any brief and/or additional evidence must specifically reference the appeal for which it is being submitted. If an affected party has filed multiple appeals with the AAO, separate copies of the brief and/or evidence must be provided for each individual appeal. Failure to do so may result in the return of the brief or evidence to the individual or entity that submitted it and preclude such material for consideration.

You may submit a brief and evidence with Form I-290B. Or you may send these materials to the AAO within 30 days of filing the appeal. You must send any materials you submit after filing the appeal to:

**USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20259-2090**

² See <http://www.uscis.gov/files/form/i-290binstr.pdf>, accessed March 22, 2011 and incorporated into the record of proceeding.

[Emphasis added].

The regulations and instructions above specifically state that if the brief is not filed at the time the appeal is filed, the petitioner must submit the brief and additional evidence directly to the AAO in Washington, DC. As acknowledged by counsel and supported by the USPS receipt, the petitioner did not submit the brief at the time of filing the appeal and later submitted all of the evidence to the California Service Center. Therefore, counsel was incorrect in stating that the brief was properly filed and that the AAO received the brief. Accordingly, the AAO was not in error by summarily dismissing the appeal because the petitioner failed to submit a brief and there was no evidence of the brief in the record before the AAO. Further, there was no misapplication of Service policy here as required by the regulations for a motion to reconsider. As a result, the motion to reopen and reconsider will be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen and the motion to reconsider are dismissed.