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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



DATE: **AUG 16 2013** 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The AAO rejected the petitioner's appeal as improperly filed and dismissed a motion to reopen and reconsider, and a subsequent motion to reopen. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion and, in the alternative, dismiss the underlying appeal.

The petitioner is a Buddhist church that seeks to classify the beneficiary as a special immigrant religious worker under section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a priestess. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous, qualifying work experience immediately preceding the filing of the petition.

On appeal, the petitioner submits a statement from counsel and a copy of a previously submitted letter.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States—
  - (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
  - (II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
  - (III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and
- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 U.S. Citizenship and Immigration Services (USCIS) 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner filed the Form I-360 petition on August 20, 2009. The director denied the petition on June 18, 2010. Counsel appealed on July 16, 2010, stating that he was acting on the petitioner's behalf. The appeal did not include a newly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, as required by the regulation at 8 C.F.R. § 292.4(a). On February 3, 2012, the AAO sent a facsimile ("fax") message to inform counsel that, under the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(2), the AAO could not accept the appeal as properly filed without a new Form G-28. A transmission report in the record confirms that the fax message transmitted successfully. Counsel did not respond within the time permitted. The AAO rejected the appeal on February 28, 2012, because the petitioner did not properly file the appeal.

The petitioner filed its first motion on April 13, 2012, moving to reopen and reconsider. Counsel stated that the lack of a new Form G-28 was a "technical" matter, and claimed that he "did not receive the fax from the AAO dated January 17, 2012 [*sic*] requesting for G-28 to be submitted." The motion included a Form G-28 that the petitioner signed and dated February 7, 2012, and counsel signed and dated February 15, 2012. Counsel did not explain why, if he never received the fax, he and the petitioner nevertheless executed (but did not submit) a new Form G-28 a few days after the AAO sent that fax. If the petitioner and counsel did not actually execute the new form in February 2012, then the dates are falsified.

The AAO dismissed the petitioner's first motion on August 22, 2012, because the motion was untimely and "there is no decision on the part of the AAO that may be reopened or reconsidered in this proceeding." The cover page of the AAO's February 2012 decision had indicated that the petitioner could file a motion to reopen and/or reconsider. Nevertheless, the untimely filing was, by itself, grounds for dismissal of the motion under 8 C.F.R. §§ 103.5(a)(1) and (4).

The petitioner filed a second motion on September 21, 2012. On Form I-290B, Notice of Appeal or Motion, counsel specified that the filing was a motion to reopen, not a motion to reconsider or a joint motion to reopen and reconsider. Counsel repeated the claims that the issue was purely "technical" and that he did not receive the AAO's fax message. Regarding the untimely filing of the motion, counsel claimed that the petitioner's "Manager is always out on retreat in their facility in upstate New York" and that the petitioner had received another notice regarding a different petition on March 12, 2012, and confused the response deadlines. The AAO dismissed the second motion on February 4, 2013, stating that the petitioner did not establish any new facts or show that prior AAO decisions were incorrect.

The petitioner filed the third motion on March 12, 2013, moving to reopen and reconsider. Counsel repeats the prior assertion that, because the earlier dismissals rested on "technical grounds," "[t]he

interest of justice will be served if the Petition/Motion will be judged on the merits.” Throughout this proceeding, counsel has acted under the assumption that USCIS has the discretion to disregard “technical grounds” because, for reasons unexplained, technical grounds lack the weight of substantive grounds based on the merits of the petition. USCIS regulations regarding filing deadlines, proof of representation, and other factors are not guidelines or recommendations. Rather, they appear in regulations that are binding on all USCIS employees.

It is well settled that the regulations which the Service [now USCIS] promulgates have the force and effect of law and are binding on the Service. *Bridges v. Wixon*, 326 U.S. 135, 153 (1945); *Bilokumsky v. Tod*, 263 U.S. 149, 155 (1923); *Matter of A-*, 3 I&N Dec. 714 (BIA 1949); cf. *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *Service v. Dulles*, 354 U.S. 363 (1957); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Matter of Santos*, 19 I&N Dec. 105 (BIA 1984); *Matter of Garcia-Flores*, 17 I&N Dec. 325 (BIA 1980).

*Matter of L-*, 20 I&N Dec. 553, 556 (BIA 1992).

The petitioner introduces no new facts on motion. The only exhibit submitted on motion is a copy of an August 5, 2009 letter from a church official, originally submitted with the initial filing of the petition. Therefore, the latest filing does not meet the requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2).

The petitioner does not identify any incorrect application of law or USCIS policy in the AAO’s prior decision, or establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the latest filing does not meet the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3).

For the above reasons, the regulation at 8 C.F.R. § 103.5(a)(4) requires dismissal of the motion.

The latest filing focuses on the original denial of the petition, with little discussion of the AAO’s three intervening decisions. The AAO has previously explained that the proper forum for such discussion would have been in a properly filed, timely appeal from the director’s initial decision.

Review of the record shows that the petitioner would not have prevailed on the merits. The USCIS regulation at 8 C.F.R. § 204.5(m)(4) requires the petitioner to show that the beneficiary has been working as a minister or in a qualifying religious occupation or vocation, either abroad or in lawful immigration status in the United States, continuously for at least the two-year period immediately preceding the filing of the petition. The USCIS regulation at 8 C.F.R. § 204.5(m)(11) reads:

*Evidence relating to the alien’s prior employment.* Qualifying prior experience during the two years immediately preceding the petition or preceding any acceptable break in the continuity of the religious work, must have occurred after the age of 14, and if acquired in the United States, must have been authorized under United States

immigration law. If the alien was employed in the United States during the two years immediately preceding the filing of the application and:

- (i) Received salaried compensation, the petitioner must submit IRS [Internal Revenue Service] documentation that the alien received a salary, such as an IRS Form W-2 or certified copies of income tax returns.
- (ii) Received non-salaried compensation, the petitioner must submit IRS documentation of the non-salaried compensation if available.
- (iii) Received no salary but provided for his or her own support, and provided support for any dependents, the petitioner must show how support was maintained by submitting with the petition additional documents such as audited financial statements, financial institution records, brokerage account statements, trust documents signed by an attorney, or other verifiable evidence acceptable to USCIS.

If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work.

The record shows that the beneficiary entered the United States on February 23, 2009, as a B-2 nonimmigrant visitor for pleasure, a classification that does not permit employment. *See* 8 C.F.R. § 214.1(e). The petitioner filed the petition two days before the beneficiary's B-2 nonimmigrant status was due to expire on August 22, 2009.

On line 5 of the employer attestation that accompanied the Form I-360 petition, the petitioner indicated that the beneficiary's "main qualification [for the position] . . . is through lineage from the family of [REDACTED] Since birth, the alien was trained and groomed to be a Priestess (Female Buddhist Teacher)."

[REDACTED] president of the petitioning church and spiritual director of its retreat center in Greenville, New York, stated that the beneficiary had worked in an affiliated monastery in Nepal "[f]or the past many years," and that "[h]er duties and responsibilities here will be the same as what she has been doing in Nepal." The official did not specifically state whether the beneficiary had been performing such work since she entered the United States in February 2009.

The record shows that counsel prepared the Form I-360 petition. At the same time, counsel also prepared a Form I-485 adjustment application and related materials for the beneficiary. On August 17, 2009, the beneficiary signed Form G-325A, Biographic Information, indicating that she had worked as a "minister" from February 1990 to February 2009, and had been "unemployed" since then.

In a request for evidence issued January 15, 2010, the director instructed the petitioner to submit evidence of lawful experience as required under the regulation at 8 C.F.R. § 204.5(m)(11). In

response, [REDACTED] stated: "Although for much of the last year [the beneficiary] has been receiving training from me and not performing all the duties that will be required of her when she receives her more permanent status she has been a great asset to our community."

In the June 2010 denial notice, the director stated: "the petitioner has not presented to the Service any evidence to substantiate that the beneficiary has performed religious work continuously for at least the two-year period immediately preceding the filing of the petition." The director observed that the beneficiary's time as a B-2 nonimmigrant "may not be used to establish the two-year experience requirement."

On appeal from that decision, counsel stated that the director "is not considering the centuries old practices of Buddhism that a Priestess is from her past life to the present life is [*sic*] more than a religious worker who by the nature of her lineage performs religious duties from birth with no salary or specific number of hours to perform religious ceremonies or rituals." In the April 2012 motion, counsel expanded on this assertion, claiming that "the beneficiary has been performing religious functions . . . since his [*sic*] physical birth." Even taking into account the belief that the beneficiary is a reincarnated holy figure, it does not follow that her very existence fulfills a qualifying religious function or amounts to carrying on qualifying religious work. At issue is not whether the petitioner considers the beneficiary to be "a Holy Being," but whether the beneficiary meets specific eligibility requirements spelled out in the statute and regulations.

Determining the status or duties of an individual within a religious organization is one thing; determining whether that individual qualifies for status or benefits under our immigration laws is another. Authority over the latter determination lies not with the [petitioning religious organization] or any other ecclesiastical body but with the secular authorities of the United States.

*Matter of Hall*, 18 I&N Dec. 203, 207 (BIA 1982).

Section 101(a)(27)(C)(iii) of the Act, however, requires the beneficiary to have "been carrying on such vocation, professional work, or other work continuously for at least the 2-year period" preceding the filing date. Passively inheriting a particular status from birth is not "carrying on . . . work." The petitioner has stated that the beneficiary would have specific duties for which she requires training, indicating that the petitioner does not intend for the beneficiary simply to be present in the United States, with no responsibilities beyond holding a hereditary title. Similarly, the regulation at 8 C.F.R. § 204.5(m)(4) requires the beneficiary to "[h]ave been working in" a qualifying religious occupation or vocation during the two years immediately prior to the filing date. The same regulation permits a short break in active experience, provided "[t]he alien was still employed as a religious worker." 8 C.F.R. § 204.5(m)(4)(i). The phrase "still employed" makes sense only if other references to "experience" are presumed to refer to employment. Likewise, the regulation at 8 C.F.R. § 204.5(m)(11) includes the phrase "employed in the United States" in reference to qualifying experience. According to Form G-325A, the beneficiary considers herself to have been "unemployed" since February 2009.

Regarding her efforts before entering the United State, the regulation at 8 C.F.R. § 204.5(m)(11) requires the petitioner to submit evidence (including IRS documentation) to establish the beneficiary's material support during her time in the United States. The petitioner has failed to submit any evidence to satisfy this requirement. The same regulation states: "If the alien was employed outside the United States during such two years, the petitioner must submit comparable evidence of the religious work." The petitioner has failed to document qualifying religious work prior to the beneficiary's arrival in the United States.

The petitioner has not met this fundamental statutory requirement and, therefore, has not established that the beneficiary was eligible for the benefit sought at the time the petitioner filed the petition. Therefore, even if the AAO had considered the petitioner's initial appeal on its merits, such consideration would not have resulted in approval of the petition.

The AAO will dismiss the motion for the above stated reasons, with each considered as an independent and alternate basis for the decision, and, in the alternative, dismisses the appeal. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

**ORDER:** The motion is dismissed.