

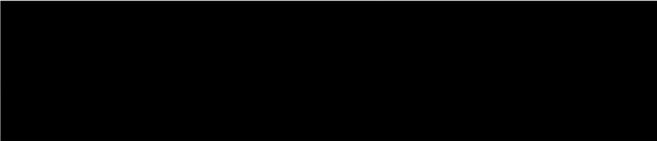


U.S. Department of Justice

Immigration and Naturalization Service

CS

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: SRC-97-101-51122 Office: Texas Service Center

Date: AUG 15 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



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Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

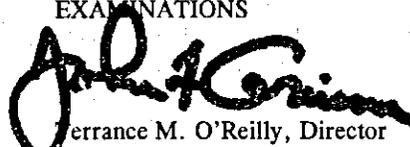
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner seeks classification of 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 serve as a pastoral assistant. The director denied the petition determining that the petitioner had failed to establish that it is a qualifying, non-profit religious organization or that the proffered position constituted a qualifying religious vocation or occupation. The Associate Commissioner affirmed the decision of the director on appeal.

On motion, counsel argues that the petitioner is a qualifying organization and that the beneficiary is eligible for the benefit sought.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided at the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. 103.5(a)(3) requires that a motion for reconsideration state the reasons for reconsideration and be supported by any pertinent precedent decisions. A motion to reconsider must 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)(4) states that a motion that does not meet applicable requirements shall be dismissed.

The supporting documentation submitted with the motion to reopen does not contain precedent decisions to show that the previous decisions were based on an incorrect application of law or Service policy. Further, the supporting documentation does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. That burden has not been met, as the petitioner has not provided any new facts or additional evidence to overcome the previous decision of the Associate Commissioner. The fact remains that the petitioner is not a qualifying, non-profit religious organization and is, therefore, ineligible to receive special immigrant classification for any prospective alien employees. Accordingly, the previous decisions of the director and the Associate Commissioner will not be disturbed, and the motion will be dismissed.

ORDER: The motion is dismissed.