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U.S. Department of Justice  
Immigration and Naturalization Service

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

[Redacted] Public Copy

File: [Redacted] Office: Vermont Service Center Date: AUG 1 2001  
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: 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)

IN BEHALF OF PETITIONER: [Redacted]

Identifying cases is needed 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

*Myra S. Rosenz*  
for Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. An appeal was summarily dismissed by the Associate Commissioner for Examinations. A subsequent motion to reopen/reconsider was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reopen/reconsider. The motion will be dismissed.

The petitioner is a church. It 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), in order to employ her as an "outreach coordinator" at a salary of \$180 per week.

The petitioner filed a Form I-360 petition for special immigrant classification on October 6, 1997. The petition was denied in a decision dated June 3, 1998. The petition was denied on the grounds that the petitioner failed to establish that the beneficiary had satisfied the requirement of at least two years of continuous experience in a religious occupation pursuant to 8 C.F.R. 204.5(m)(1), failed to establish that the petitioner had adequately established that the proposed position constituted a qualifying "religious occupation" as defined at 8 C.F.R. 204.5(m)(2), and failed to submit the required documentation to establish the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2).

The petitioner, by and through counsel, filed a timely appeal from the decision stating that a brief would be forthcoming within thirty days. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), summarily dismissed the appeal on November 10, 1999 for the failure to actually submit the brief pursuant to 8 C.F.R. 103.3(a)(3)(iv).

The petitioner timely filed a motion to reopen on the grounds that the church had inadvertently mailed the brief to the wrong address. The AAO dismissed the motion on June 27, 2000 finding an insufficient basis to warrant reopening pursuant to 8 C.F.R. 103.5(a)(2) & (a)(4).

The petitioner, by and through counsel, now files a second "motion to reopen/reconsider" requesting the Associate Commissioner to "condone the technical error" of the misfiled brief.

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and/or evidence presented are material and were unavailable at the time the prior decision was issued. Id.

According to 8 C.F.R. 103.5(a)(3), 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.

According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

Counsel has not challenged the grounds for summary dismissal in the decision of November 10, 1999 or challenged the dismissal of the motion on June 27, 2000. Counsel essentially seeks a readjudication of the underlying petition and waiver of the thirty-day appeal period. There is no provision for such an adjudication on a motion to reopen or a motion to reconsider. Therefore, counsel failed to establish that this action meets the applicable requirements of a motion and must be dismissed.

The petitioner is free to file a new petition without prejudice.

**ORDER:** The motion is dismissed.