U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted] Public Copy

File: [redacted] Office: Nebraska Service Center Date: JUL 24 2001

IN RE: Petitioner: [redacted]
Beneficiary:

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 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

Myra L. Rosenberg
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The mater is again before the Associate Commissioner on motion to reopen. 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 "educational coordinator."

The Form I-360 petition for special immigrant classification was filed on September 16, 1999, and was denied on its merits in a decision dated May 26, 2000. The center director denied the petition finding that the petitioner failed to establish that the proposed position constituted a qualifying religious occupation for the purpose of special immigrant classification.

The petitioner timely filed an appeal from the decision. In a decision dated September 19, 2000, the Associate Commissioner determined that the petitioner failed to overcome the grounds for denial and dismissed the appeal. In the decision, it was further found that the petitioner failed to establish that the beneficiary had had the requisite two years of continuous experience in a religious occupation pursuant to 8 C.F.R. 204.5(m)(1), that a qualifying job offer had been tendered pursuant to 8 C.F.R. 204.5(m)(4), and that the petitioner had the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2).

Counsel for the petitioner now files a motion to reopen the proceeding and submits a letter from the pastor of the church asserting that the position satisfies the criteria of a qualifying religious occupation.

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 were unavailable at the time the prior decision was issued. Id. According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

On motion, the petitioner expresses disagreement with the prior decision, but has not presented any new material evidence that was previously unavailable and has not identified a misapplication of law. The petitioner 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, the petitioner 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. The decision of September 19, 2000 is affirmed.