



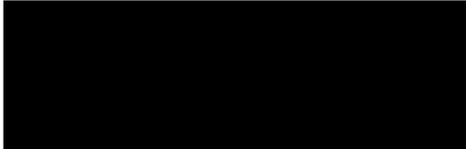
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U.S. Department of Justice

Immigration and Naturalization Service

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



File: [Redacted] Office: Vermont Service Center

Date: 1 - MAR 2002

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



ADUJ JI 11/11/02

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, Director  
Administrative Appeals Office

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

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister 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 its "children's pastor" at a salary of \$22,000 per year.

The petitioner filed a Form I-360 petition for special immigrant classification on March 23, 2000. The petition was denied on its merits in a decision dated October 18, 2000.

The petitioner, by and through counsel, filed an appeal from the decision with an appellate brief and additional evidence. The Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), reviewed the record and dismissed the appeal on July 13, 2001 finding that the petitioner had failed to overcome the grounds for denial. The AAO further noted that the petition was deficient on additional grounds not addressed by the center director.

On motion, counsel requested reconsideration of the decision and submitted additional evidence.

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)(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. In order to prevail on a motion for reconsideration, a petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." Id.

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

Here, counsel has not presented new evidence that was previously unavailable and has not established that the prior decision was an incorrect application of law. Counsel essentially seeks a readjudication of the underlying petition and a 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. Counsel has failed to establish that this action meets the applicable requirements of a motion and it must be dismissed.

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

**ORDER:** The motion is dismissed.