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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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 2 MAR 2002

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: Self-represented

Adm Office Copy

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, Nebraska Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on a motion to reopen and/or reconsider. The motion will be dismissed.

The petitioner is an independent church seeking classification of the beneficiary in 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 a religious teacher at a salary of $1,500 per month.

The petition was denied by the center director on multiple grounds of ineligibility in a decision dated February 29, 2000. The petitioner filed a timely appeal from the decision. The Associate Commissioner, by and through the Administrative Appeals Office (AAO), reviewed the appeal and found that the petitioner had failed to overcome the grounds for denial. The appeal was dismissed in a decision dated November 13, 2000.

On motion, the petitioner asserts that a similar petition was approved by the center director and argued that the denial of the instant petition is inconsistent. The petitioner also argued that the denial of the petition interferes with freedom of religious expression.

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.

The record of the additional petition referred to by the petitioner is not part of the instant record of proceeding and is unavailable for review. While it has not been shown that the facts of the two alleged cases are similar, it must be noted that unpublished administrative decisions do not have binding precedential value. See 8 C.F.R. 103.3(c). It must further be noted that the Service

is not bound by past decisions which may have been in error.

The additional argument that the denial of the visa petition was violative of constitutional protections is not persuasive. Determining the status or the duties of an individual within a religious organization is not a matter under the Service's purview; determining whether that individual qualifies for status or benefits under our immigration laws is another matter. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. Matter of Hall, 18 I&N Dec. 203 (BIA 1982); Matter of Rhee, 16 I&N Dec. 607 (BIA 1978).

Accordingly, the petitioner has failed to establish that this action meets the applicable requirements of a motion and it must be dismissed.

ORDER: The motion is dismissed.