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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

File: EAC-99-271-52636 Office: Vermont Service Center Date: APR 11 2003

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

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 of Examinations, now the Administrative Appeals Office (AAO). The matter is before the AAO 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 a "catechist."

The petitioner filed a Form I-360 petition for special immigrant classification on September 21, 1999. The petition was denied on its merits in a decision dated January 14, 2001. The center director found that the petitioner failed to establish that the beneficiary had had at least two years of continuous experience in a full-time religious occupation.

The petitioner filed an appeal from the decision with an appellate brief and additional evidence. The AAO reviewed the record and dismissed the appeal on January 7, 2002, finding that the petitioner had failed to overcome the grounds for denial.

The petitioner now files a motion to reopen arguing, in pertinent part, that the beneficiary has been a full-time volunteer since entering the United States. The argument that the beneficiary has been a full-time qualifying volunteer has been reviewed and rejected. Further, in its brief, the petitioner claims that the service center has approved similar petitions in the past. Even assuming that this claim is correct, those decisions do not bind the AAO to approve the petition filed for this beneficiary. The AAO must decide this case only on the basis of the record. 8 C.F.R. § 103.2(b)(16). The Service, moreover, is not bound by any prior Service decision, unless the Service itself has designated that decision as a precedent. 8 C.F.R. § 103.3(c). It is also important to note that the AAO is never bound by a service center decision.

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. To prevail on a motion for reconsideration, the 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 petitioner 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. There is no provision for such an adjudication on a motion to reopen or a motion to reconsider. The petitioner 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.