

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



cl

DEC 30 2004

FILE: 
EAC 02.115 51972

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
 Beneficiary:



PETITION: Immigrant 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

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Maip Luom

e Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The director reopened the petition following an untimely appeal, and again denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued the decision on September 12, 2003. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. The appeal was received by Citizenship and Immigration Services (CIS) on October 17, 2003, or 35 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.