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U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

01

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date: **SEP 14 2004**

IN RE:

Petitioner:
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)

ON BEHALF OF PETITIONER:

[Redacted]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a church. It seeks to classify 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), to perform services as a men's fellowship leader. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition, that the position qualified as that of a religious worker, or that the beneficiary was qualified for the position within the petitioning organization. The director further determined that the petitioner had not established that it had extended a valid job offer to the beneficiary or that it had the ability to pay the beneficiary the proffered salary.

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 July 31, 2003. It is noted that the director properly gave notice to the petitioner that it had 30 days within which to file the appeal. The petitioner's initial appeal of the decision was rejected because it had not been properly signed. 8 C.F.R. § 103.2(a)(7)(i). The resubmitted appeal was received on September 8, 2003, 39 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.

ORDER: The appeal is rejected.