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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 23 2004

IN RE: Petitioner: [redacted]
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:

[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.

Mari Johnson

For Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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 an education and service coordinator. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition; (2) that the position qualifies as a religious occupation; (3) its ability to pay the beneficiary's proffered wage; or (4) that the beneficiary had entered the United States in order to perform qualifying religious work.

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 of 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 May 28, 2003. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Although counsel dated the appeal June 25, 2003, the Service Center did not receive the appeal until July 2, 2003, 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. In this instance, the appeal contains no new evidence and no substantive arguments, and therefore the filing does not meet the requirements of a motion to reopen or to reconsider. *See* 8 C.F.R. § 103.5(a)(2) and (3). As the appeal was untimely filed, the appeal must be rejected.

We note that, even if the appeal had been timely filed, it would have been summarily dismissed. The appeal consists solely of the assertion that a brief will be forthcoming within 30 days. The only material in the record that was submitted within that 30-day period is a letter from Jim Beaird, superintendent of the Southeast Region Open Bible Churches, discussing the beneficiary's stipend, housing arrangements, and other matters. The letter does not address the findings cited as the grounds for denial of the petition.

On May 4, 2004, the beneficiary submitted additional materials relating to the petition and appeal. These materials were submitted nearly a year after the May 28, 2003 denial date. Pursuant to 8 C.F.R. § 103.3(a)(2)(vii), the AAO is not required to accept untimely supplements to appeals. Rather, the petitioner must, in advance, demonstrate that good cause exists for an extension of time. In this instance, the petitioner did not show good cause, and the initial appeal contained no indication at all that the petitioner would need nearly a year to obtain further documentation. The filing of an appeal does not secure for the petitioner an open-ended or indefinite period in which to supplement the record at will.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the appeal would have been summarily dismissed if it had not been rejected as untimely.

ORDER: The appeal is rejected.