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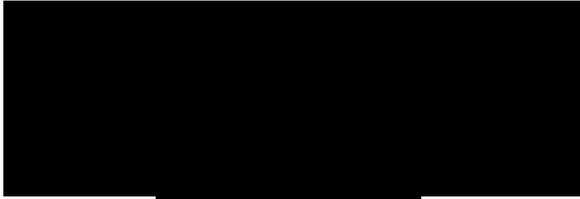
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: OCT 26 2005
SRC 04 193 51008

IN RE: Petitioner: [Redacted]
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:

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.

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 Form I-360, Petition for [REDACTED] Widow or Special Immigrant, filed with Citizenship and Immigration Services (CIS), indicates that the [REDACTED] is the petitioner. The petition, however, is signed by [REDACTED]. Therefore, the [REDACTED] cannot be considered as having filed the petition on behalf of [REDACTED] and [REDACTED] shall be considered as the self-petitioner.

The petitioner seeks classification 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 Buddhist minister. The director determined that the petitioner has not established that it qualified as a bona fide nonprofit religious organization.

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 March 31, 2005. The petitioner's appeal, dated April 21, 2005, was received by the service center on March 9, 2005, 39 days after the decision was issued. Accordingly, the appeal was untimely filed.

In a letter accompanying the appeal, the petitioner states that he timely filed the appeal with the AAO; however, the appeal was returned because it had not been filed with the proper office. The petitioner states that he followed instructions by filing the appeal with the AAO. However, the director's decision specifically advises the petitioner that an appeal must be filed with the service center that issued the decision.

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.