

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

C1

[REDACTED]

FILE: [REDACTED]
SRC 06 111 50944

Office: TEXAS SERVICE CENTER Date: MAR 07 2007

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The matter is now before the Administrative Appeals Office (AAO) 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).

Pursuant to 8 C.F.R. § 103.2(a)(1), every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, including where the form should be filed. Therefore, a submission sent to the wrong address has not been properly filed.

The instructions included with Form I-290B, Notice of Appeal, state, in pertinent part:

You must file your appeal with the U.S. Citizenship and Immigration Services (USCIS) office that made the unfavorable decision within 30 calendar days after service of the decision (33 days if your decision was mailed). The date of service is normally the date of the decision.

Do **not** send your appeal directly to the Administrative Appeals Office (AAO). . . .

You may submit a brief and evidence **with** this form. Or you may send these materials to the AAO within 30 days of the date you sign this form. You must send any materials you submit **after** filing the appeal to:

**USCIS Administrative Appeals Office
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W. , Room A3042
Washington, D.C. 20529**

(Emphasis in original.) The director issued the decision on May 4, 2006, and gave notice to the petitioner that it had 33 days to file the appeal with "this office," *i.e.*, the office that issued the denial notice. The petitioner mailed the appeal on June 2, 2006 to the AAO. The AAO returned the appeal and informed the petitioner of the proper address for filing the appeal. The director received the appeal on June 15, 2006, or 42 days after the decision was issued. Accordingly, the appeal was untimely filed.

The petitioner's representative states that the petitioner sent the appeal "to the address listed in the instructions associated with filing an appeal brief on the form provided by USCIS." The instructions, however, state: "Do **not** send your appeal directly to the Administrative Appeals Office," and specify that the AAO's own address is for supplementary materials submitted "**after** filing the appeal." The representative's disregard for these instructions does not nullify or otherwise override the regulations concerning the disposition of untimely appeals.

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 erroneously marked the appeal as timely and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected. Discretion as to whether to treat the late appeal as a motion rests with the director.

ORDER: The appeal is rejected.