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



U.S. Citizenship
and Immigration
Services

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CA

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: MAY 04 2007
SRC 04 183 51910

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:



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.

Maura Deadrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

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

We note that Part 1 of the Form I-360 petition identifies the First Baptist Church of Riviera Beach as the petitioner. The church, however, is not the petitioner.

Pursuant to 8 C.F.R. § 103.2(a)(1), every petition must be executed and filed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(2) requires the petitioner to sign the petition. Part 9 of Form I-360, "Signature," is the portion of the form dedicated to the signature of the petitioner. Here, no church official signed Part 9 of the Form I-360. Instead, the alien beneficiary signed this part of the form. Thus, the alien himself took responsibility for the petition, and he, himself, must be considered to be the petitioner. [REDACTED] signed Part 10 of the Form I-360, "Signature of person preparing form," but by this signature [REDACTED] merely attested that he "prepared this petition at the request of the above person," i.e., the actual petitioner. It may well be that both the alien beneficiary and [REDACTED] intended for the church to be the petitioner, but only the alien beneficiary has formally accepted responsibility for the petition. Because the same attorney of record represents both the beneficiary and the church, and that attorney both received the denial notice and filed the appeal, there are no procedural difficulties arising from this attorney's involvement.

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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on June 7, 2005. The director properly advised the petitioner, through his attorney of record, of the 33-days appellate filing deadline. Counsel dated the appeal July 25, 2005. The director received the appeal on July 28, 2005, 51 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 initially annotated the appeal as timely, but appears then to have deleted this annotation, and forwarded the matter to the AAO.

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

ORDER: The appeal is rejected.