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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 07 071 52296 Office: CALIFORNIA SERVICE CENTER Date: **SEP 04 2008**

IN RE: Petitioner: I
Beneficiary: S



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:

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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. The AAO will return the matter to the director for consideration as a motion to reconsider.

We note that the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by [REDACTED] who identified himself as a minister and "representative." There is no evidence that [REDACTED] is an accredited representative of an organization described at 8 C.F.R. § 292.2, as required by 8 C.F.R. § 292.1(a)(4). [REDACTED] also claimed to hold a law degree, but he has not shown that he is a member of the bar or meets the definition of "attorney" at 8 C.F.R. § 1.1(f). Pursuant to 8 C.F.R. § 292.2(a)(iii), a law graduate who is not a member of the bar may represent an affected party only without remuneration and under the direct supervision of a licensed attorney or accredited representative. There is no evidence that [REDACTED] met these requirements. Because [REDACTED] has not established that he is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner's behalf under 8 C.F.R. § 292.1, the regulations do not permit us to regard [REDACTED] as the petitioner's attorney or representative in this proceeding. There is no evidence that [REDACTED] participated in the preparation or submission of the petitioner's appeal.

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 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 September 21, 2007. The director properly notified the petitioner that it had 33 days to file the appeal. The petitioner initially submitted an unsigned Form I-290B Notice of Appeal, which was not properly filed under 8 C.F.R. § 103.2(a)(2). The petitioner eventually submitted a properly signed appeal form which the director received on November 7, 2007, 47 days after the decision was issued. Accordingly, the appeal was untimely filed. The director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal meets the requirements of a motion to reconsider. The petitioner, on appeal, alleges error on the director's part concerning the significance of certain titles and credentials held by the beneficiary. The AAO will not consider the merits of this argument at this time. 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). Therefore, the director must consider the untimely appeal as a motion to reconsider and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the director for consideration as a motion to reconsider.