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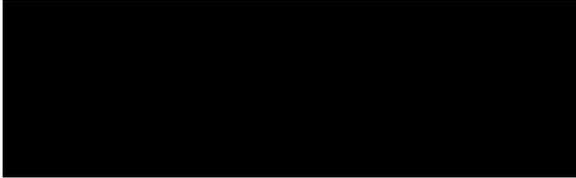
U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 01 218 50743 Office: CALIFORNIA SERVICE CENTER Date: JUL 28 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

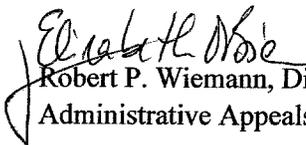
PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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 Acting Director, California Service Center, denied the immigrant visa petition. The petitioner appealed the director's decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on June 12, 2003 as untimely filed. The petitioner filed a motion to reopen and reconsider on July 25, 2003. The motion will be dismissed and the prior decisions of the director and the AAO shall be affirmed.

On motion, the petitioner asserts that its appeal was timely because it was mailed 30 days after the Notice of Decision. 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 acting director issued the decision on February 27, 2002. It is noted that the acting director properly gave notice to the petitioner that it had 33 days to file the appeal. Although the petitioner dated the appeal March 27, 2002, it was received by Citizenship and Immigration Services (CIS) on April 11, 2002, or 45 days after the decision was issued. Accordingly, the appeal was untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 105(a)(1)(i) provides that the motion to reopen and/or reconsider must be filed within 30 days of the decision that the motion seeks to reopen. If the decision is served by mail, three days are added to the prescribed period. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the AAO issued the decision on June 12, 2003. The motion was received by CIS on July 25, 2003, or 43 days after the decision was issued. Accordingly, the motion was untimely filed.

As the motion was untimely filed, the motion must be dismissed.

ORDER: The motion is dismissed and the prior decisions of the acting director and AAO are affirmed.