



U.S. Citizenship
and Immigration
Services

[REDACTED]

SEP 24 2004

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER Date:

IN RE:

Petitioner:
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, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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

The petitioner is a mosque and Islamic center seeking to classify the beneficiary 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 religious teacher. The director determined that the petitioner had not established (1) that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition; or (2) that the petitioner has the ability to pay the proffered wage.

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 director issued the decision on September 10, 2003. The director properly gave notice to the petitioner that it had 33 days to file the appeal. Although counsel dated the appeal October 9, 2003, the Service Center did not receive the appeal until October 15, 2003, 35 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. In this instance, the appeal contains no new evidence and no substantive arguments, and therefore the filing does not meet the requirements of a motion to reopen or to reconsider. *See* 8 C.F.R. § 103.5(a)(2) and (3). As the appeal was untimely filed, the appeal must be rejected.

We note that, even if the appeal had been timely filed, it would have been summarily dismissed. The appeal consists solely of the petitioner's assertions that the decision was "based out of nothing less than discrimination, prejudice, and religious intolerance" and that "nothing we could have submitted would have been sufficient." The petitioner also requested that the decision be reconsidered.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the appeal would have been summarily dismissed if it had not been rejected as untimely.

ORDER: The appeal is rejected.