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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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FILE:



Office: TEXAS SERVICE CENTER

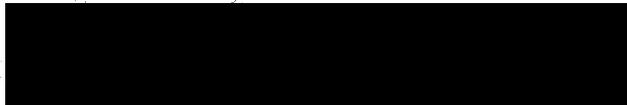
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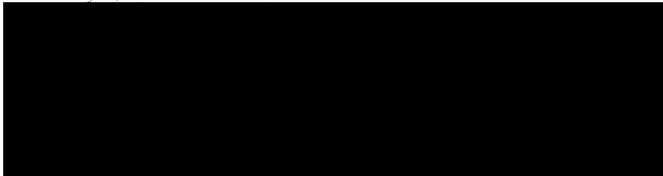
Petitioner:



Beneficiary:

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:



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 employment-based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal as untimely filed. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be rejected.

The petitioner is a church. It seeks 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 an arts ministry director. The director determined that the petitioner had not established that it qualified as a bona fide nonprofit religious organization. The director also determined that the petitioner had not established that the beneficiary had been engaged continuously in a qualifying religious vocation or occupation for two full years immediately preceding the filing of the petition or that the position qualified as that of a religious worker. The director further determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered salary.

The director denied the petition on April 24, 2003. On July 21, 2003, counsel for the petitioner filed an appeal seeking review of the director's decision. After reviewing the record, the AAO rejected the appeal, as the appeal had not been filed in a timely manner. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner has now filed a motion seeking to reopen the appeal that was rejected as untimely filed. Counsel asserts on motion that the director gave ambiguous instructions as to where the appeal was to be filed. Counsel further asserts that the appeal was timely filed with the AAO, and its subsequent transfer to the service center by the AAO should not have rendered the appeal untimely.

The instructions in section 1 of the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, clearly indicate that the appeal must be filed with the office that made the unfavorable decision and specifically directs the appellant not to mail the appeal to the AAO.

As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the director rendered the disputed decision, the AAO has no jurisdiction over this motion and the motion must be rejected.

ORDER: The motion is rejected.