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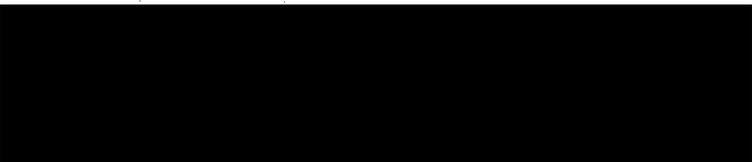
U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 10 2005
WAC 01 218 52006

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:
[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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) determined that the appeal was not filed in a timely manner. The AAO rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be rejected.

On motion, counsel argues that the appeal was timely filed and, alternatively, that the AAO abused its discretion by refusing to treat the late appeal as a motion to reopen. Counsel further argues that the AAO failed to explain the basis of its denial of discretionary relief and that “[s]uch abject failure . . . constitutes abuse of discretion as a matter of law.”

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 record indicates that the director issued the decision on February 22, 2002. The petitioner’s appeal, dated March 25, 2002, was returned for signature. The properly signed appeal was received by the service center on April 2, 2002, 39 days after the decision was issued. Accordingly, the appeal was untimely filed.

On motion, counsel asserts that the appeal was timely filed but that the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, was returned for an original signature, and that the signed Form I-290B was returned to CIS via overnight mail. Counsel further asserts that the delay in filing was “relatively minor.”

The regulation at 8 C.F.R. § 103.2(a) states, in pertinent part:

Every application, petition, appeal, motion, request or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.

The regulation at 8 C.F.R. § 103.3(a)(2) states that an appeal to the Administrative Appeals Unit (now AAO) shall be filed on Form I-290B. The instructions on the Form I-290B state, “When a decision on a petition may be appealed, the petitioner, an authorized official of a petitioning corporation, or the petitioner’s attorney or representative must sign this form.”

In his letter accompanying the signed Form I-290B, counsel acknowledged that the Form I-290B was submitted unsigned. According to counsel’s timeline submitted on motion, he mailed the signed Form I-290B on April 1, 2002, and that it was received by CIS on April 2, 2002. Therefore, the record is clear that the appeal was not timely filed.¹ 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)(I).

¹ To support his argument that CIS should waive the late filing, counsel cites 8 C.F.R. § 214.1(c)(4). However, that regulatory provision relates to nonimmigrant petitions and refers to the nonimmigrant’s timely filing for an extension of

The petitioner has now filed a motion seeking to reopen the appeal that was rejected as untimely filed.

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 service center director rendered the disputed decision, the AAO has no jurisdiction over this motion and the motion must be rejected.

ORDER: The motion is rejected.

stay and maintenance of status. The provision has no bearing on the petitioner's request for this preference based immigrant visa classification.