

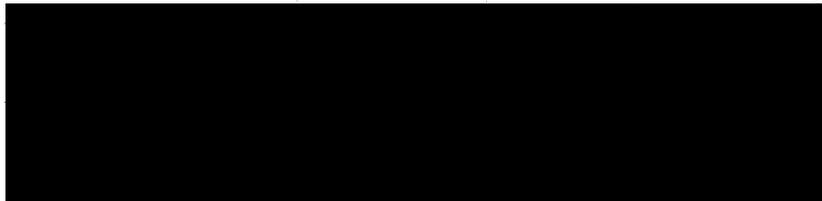
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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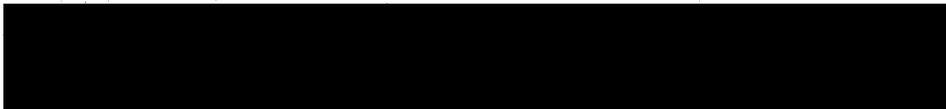
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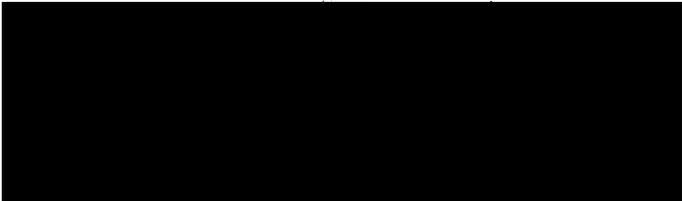
Office: CALIFORNIA SERVICE CENTER Date:

IN RE: 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.

[Handwritten signature]

~~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) dismissed a subsequent appeal as untimely filed. The matter is now before the AAO on a motion to 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 a minister. The director 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.

The director denied the petition on December 30, 2003. On February 3, 2004, 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 reconsideration of the rejected appeal. Counsel asserts on motion that mail delays during the holiday season resulted in the "interested parties" receipt of the director's notice of denial 17 days after it was mailed, leaving the parties with "less than half of the prescribed time to reply." Counsel asserts that the "time remaining was not sufficient time to prepare a non-frivolous, timely response, therefore resulting in a two-day late notice of appeal."

It is noted that counsel submitted no brief or evidence with the Form I-290B, Notice of Appeal to the Administrative Appeals Unit, and stated on the form that a brief and/or evidence would be submitted within 30 days of filing the appeal. Thus, counsel's assertion that the delay in filing the Form I-290B was the result of needing time to prepare a "non-frivolous" appeal is without merit.

As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reconsidered 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.