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

U.S. Citizenship and Immigration Services

C1

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 0 4 2005
SRC 03 017 51688

IN RE: Petitioner: [redacted]
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:

PUBLIC COPY

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The petitioner 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 teacher and Imam or religious leader. 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, that the position qualified as that of a religious worker, or that the beneficiary was qualified for the position within the petitioning organization.

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 August 6, 2003. It is noted that the director erroneously notified the petitioner that it had 18 days within which to file the appeal. The service center received the appeal on September 15, 2003, 40 days after the decision was issued. Accordingly, the appeal was untimely filed.

On appeal, the petitioner states that it filed its appeal filed late because the director's Notice of Denial was sent to the petitioner's street address instead of its mailing address, and was eventually forwarded to the petitioner by the post office. We note that the petitioner listed its street address as its mailing address on the Form I-360, Petition for Amerasian, Widow or Special Immigrant.

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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.