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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER Date: **OCT 26 2006**

SRC 03 185 50946

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). The petitioner must file the appeal, with the fee required by 8 C.F.R. § 103.7, with the office that rendered the decision being appealed. *See* 8 C.F.R. § 103.3(a)(2)(i). 8 C.F.R. § 103.7 indicates that the fee for an appeal to the AAO is \$385, effective September 28, 2005.

The record indicates that the director issued the decision on October 3, 2005. The director properly gave notice to the petitioner that it had 33 days to file the appeal with "this office," *i.e.*, the Texas Service Center which had rendered the decision. The director erroneously stated that the required fee was \$110 rather than \$385.

Monday, November 7, 2005, was the last possible day on which the petitioner could file a timely appeal. On that day, the AAO received the petitioner's appeal. This appeal was not properly filed at that time because the above-cited regulations require appeals to be filed with the office that issued the unfavorable decision. The petitioner submitted the appeal to the Texas Service Center, with the incorrect \$110 fee, on November 17, 2005. The appeal did not arrive at the correct place with the correct \$385 fee until December 19, 2005. 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. 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 erroneously annotated the appeal as timely and forwarded the matter to the AAO. Even if we disregard the submission of the incorrect fee because of the director's error, an appeal submitted directly to the AAO is not properly filed. The proper course of action at this point would be for the Texas Service Center to determine whether the untimely appeal has merit as a motion.

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

ORDER: The appeal is rejected.