

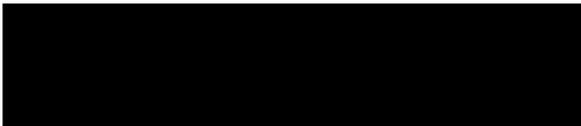
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

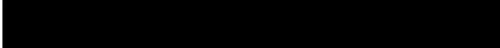


U.S. Citizenship
and Immigration
Services



C₁

DATE: **APR 21 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE: 
WAC 09 225 51825

IN RE: Petitioner: 
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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely, with a summary dismissal in the alternative.

The self-petitioning alien seeks classification 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 missionary at [REDACTED]. The director determined that the petitioner had failed to submit the required employer attestation.

Part 1 of the Form I-360 petition identifies [REDACTED] as the petitioner. Review of the petition form, however, indicates that the alien beneficiary is the petitioner. An applicant or petitioner must sign his or her application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, the beneficiary, rather than any church official, signed Part 9 of the Form I-360, "Signature." Thus, the alien, and not the church, has taken responsibility for the content of the petition.

In order to properly file an appeal, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(i) requires the petitioner to file the complete appeal within 30 days after service of the unfavorable decision. If the director mailed the decision, the petitioner must file 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 record indicates that the director issued the decision on November 12, 2009. The director properly advised that the petitioner had 33 days to file the appeal. The envelope that contained the appeal is postmarked December 11, 2009, but USCIS did not receive the appeal until December 28, 2009, 47 days after the decision was issued. Accordingly, the appeal was untimely filed. The director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. The petitioner's entire statement on appeal reads: "I am including a copy of the church

paper.” The only accompanying document is a copy of a determination letter that the Internal Revenue Service issued to the church in 1993. The director did not base the denial of the petition on the absence of that document; its submission does not address the grounds stated in the decision. Therefore, we will not treat the untimely appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

In the alternative, even if the AAO accepted the appeal, we would summarily dismiss it. The USCIS regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.” As we have already noted, the entire appeal consists of a copy of an IRS determination letter, and the petitioner’s statement that “a copy of the church paper” accompanies the appeal. The petitioner did not address the lack of an employer attestation and other church materials, which was the basis for the denial of the petition.

Because the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the AAO would have summarily dismissed the appeal even if it were timely filed (which is not the case).

ORDER: The appeal is rejected as untimely, or, in the alternative, summarily dismissed.