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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

**PUBLIC COPY**



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DATE

Office: CALIFORNIA SERVICE CENTER

FILE



**MAY 24 2012**

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:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, revoked the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected both as improperly filed and untimely filed.

The appeal will be rejected as improperly filed because the beneficiary signed the Form I-290B, Notice of Appeal or Motion. Part 1 of the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, filed with U.S. Citizenship and Immigration Services (USCIS) on May 18, 2010 indicates that [REDACTED] is the petitioner. Review of the petition indicates that [REDACTED] signed the petition. An applicant or petitioner must sign his or her own application or petition. 8 C.F.R. § 103.2(a)(2). In this instance, Part 10 of the petition, "Signature," has been signed by an official of [REDACTED]. Therefore, [REDACTED] is considered as having filed the petition on behalf of [REDACTED].

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

*Improperly filed appeal – (A) Appeal filed by person or entity not entitled to file it – (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

As indicated above, only an affected party may file an appeal of an unfavorable decision. The Form I-290B, Notice of Appeal or Motion, is signed by the beneficiary, [REDACTED]. The appeal has not been filed by the petitioner or by any entity with legal standing in the proceeding. Therefore, the appeal has not been properly filed and must be rejected.

Further, 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 or the attorney or representative of record must file the complete appeal within 15 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 18 days. See 8 C.F.R. §

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<sup>1</sup> Before the director, the petitioner submitted a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, indicating that it was represented by an attorney, [REDACTED]. Subsequent to the denial of the Form I-360 petition, the petitioner did not submit a Form G-28 indicating that [REDACTED] represented the petitioner on appeal. Therefore, the petitioner on appeal will be considered to be self-represented.

103.8(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 service center director issued the decision on April 11, 2011. It is noted that the service center director erroneously gave notice to the petitioner that it had 30 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit, despite the director's notice to the contrary.

Although the beneficiary dated the Form I-290B May 9, 2011, it was not received until June 3, 2011, or 53 days after the decision was issued. 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 Director of the California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of 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.