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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

[Redacted]

DATE:

Office: CALIFORNIA SERVICE CENTER

FILE: [Redacted]

SEP 24 2012

IN RE:

Petitioner: [Redacted]

Beneficiary: [Redacted]

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:

[Redacted]

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,

U Deadrck
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The regulation at 8 C.F.R. § 103.2(a)(1) provides, in pertinent part:

General. Every benefit request or other document submitted to DHS [Department of Homeland Security] must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

Under the provisions of 8 C.F.R. § 103.5(a)(1)(i), a motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen. The regulation at 8 C.F.R. § 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. The AAO issued its decision on April 23, 2012. The petitioner initially submitted a Form I-290B, Notice of Appeal or Motion, without completing Part 2 indicating whether it was filing an appeal or motion. The instructions to the Form I-290B advise the filer, "You must clearly indicate if you are filing an appeal or motion." By a July 6, 2012 Form I-797C, Notice of Action, the director notified the petitioner that the Form I-290B was rejected and the form and fees returned as the petitioner failed to complete Part 2 of the form. The completed motion was received by the service center on June 27, 2012, 65 days after the AAO issued its decision. The motion was therefore filed untimely.

The regulation at 8 C.F.R. § 103.5(a) provides that the agency may, in its discretion, accept a motion to reopen beyond this time frame if the petitioner demonstrates that the delay was reasonable and beyond his or her control. The petitioner did not allege and submitted no evidence to establish that its failure to file its motion within the prescribed time was beyond its control.

ORDER: The motion is dismissed.