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**U.S. Citizenship  
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Services**

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01

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 28 2005  
WAC 01 217 54637

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:**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The director rejected the petitioner's subsequent appeal as untimely filed and further determined, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), that the late appeal did not meet the requirements of a motion. The petitioner's motion to reopen and reconsider the director's decision was dismissed by the director. The petition is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It 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 director of its children's ministry. 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. The petitioner's motion to reopen and reconsider was forwarded to the AAO pursuant to 8 C.F.R. § 103.3(a)(2)(iv).

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 April 8, 2002. The petitioner's appeal, dated May 2, 2002, was received by the service center on May 20, 2002, 42 days after the decision was issued. Accordingly, the appeal was untimely filed.

On motion, counsel submitted a copy of the PS Form [REDACTED], Certified Mail Receipt, reflecting that the petitioner mailed its appeal to the service center on May 2, 2002. The PS Form 3811, Domestic Return Receipt, reflects that the appeal was received in the service center on May 20, 2002. Counsel asserted that the petitioner "acted reasonably and prudently to ensure that [the] Notice of Appeal would be timely received." Counsel further asserted that the delay in receipt of the appeal by the service center was due to "mishandling" by the U.S. Postal Service or the service center.

Counsel further asserted on motion:

[I]t is highly likely or probable that the mail was in fact delivered to the Service's postal box office address prior to May 11, 2002 but the Service failed to retrieve it and issue it a receipt until May 20, 2002, as a result of other problems or malfeasance that had been occurring in the Service's mail room in the period immediately leading up to this date, as reported in the *New York Times* and as subsequently acknowledged by the Service.

The copy of *The New York Times* article submitted by counsel indicates that the intentional destruction of documents was discovered by Citizenship and Immigration Services authorities in April 2002 and there is no evidence that the petitioner's appeal, filed in May 2002, was affected by the misconduct that occurred earlier in the service center.

Under current regulations, the filing date of an appeal, application, or petition is determined by the date of "actual receipt" by the service center and not by the mailing date. *See* 8 C.F.R. § 103.2(a)(7)(i). The evidence establishes

that the petitioner's appeal was received in the service center 42 days after the director issued his decision. Therefore, the appeal was untimely filed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.