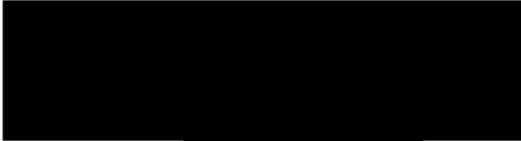




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**



C1

FILE:

SRC 05 229 53142

Office: TEXAS SERVICE CENTER

Date:

DEC 27 2006

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:



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 AAO will reject the appeal as untimely filed and return the matter for further action by the director.

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).

Every appeal shall be executed and filed in accordance with the instructions on the form, including where it should be filed. *See* 8 C.F.R. § 103.2(a)(1). The instructions to Form I-290B, Notice of Appeal, instruct the petitioner to file the appeal with the “office that made the unfavorable decision. . . . Do **not** send your appeal directly to the Administrative Appeals Office (AAO)” (emphasis in original).

The record indicates that the director issued the decision on December 1, 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 that issued the denial notice). Despite the specific instruction not to submit the appeal directly to the AAO, the petitioner mailed the appeal to the AAO on or about December 29, 2005. The AAO returned the appeal because the AAO does not accept direct filings or process filing fees. On January 10, 2006, the petitioner mailed the appeal to the Texas Service Center, which received the appeal on January 12, 2006, 42 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. *See Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006). Delay in delivery does not warrant special consideration of the appeal. *Id.*

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).

As the appeal was untimely filed, the appeal must be rejected. The AAO nevertheless encourages the director to consider the untimely appeal as a motion. The director appears to have misinterpreted or failed to take into account crucial evidence. For instance, the director acknowledged the petitioner’s submission of an uninterrupted series of canceled checks, but the director concluded that there was no evidence that these checks represent “paychecks,” despite the fact that numerous checks are marked “salary” or “monthly sal.” The petitioner has raised this material issue on appeal.

ORDER: The appeal is rejected. The matter is returned to the director for consideration as a motion. If the director reopens the petition and issues a new denial decision, the director is instructed to certify the new decision to the AAO for review.