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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] SRC 01 203 54402

Office: TEXAS SERVICE CENTER Date: **JUL 27 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

W Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. 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 must file the complete appeal with the office where the unfavorable decision was made 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 record indicates that the director issued the decision on March 2, 2006. The director supplied the petitioner with Form I-290B, Notice of Appeal, and its accompanying instructions. The instructions to the appeal notice state: "You must file your appeal with the . . . office that made the unfavorable decision. . . . Do **not** send your appeal directly to the Administrative Appeals Office." The instructions also repeated the requirement that the appeal must be received within 33 days of the mailing of the denial notice.

Rather than follow these instructions, the petitioner, through counsel, submitted Form I-290B directly to the AAO. The AAO received the appeal notice on April 5, 2006, which was 34 days after the date on the denial notice. The appeal would have been untimely even if the petitioner had followed the director's instructions regarding where to file the appeal. The appeal notice did not reach the proper office (*i.e.*, the Texas Service Center) until April 13, 2006, 42 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 service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director erroneously annotated the appeal as timely and forwarded the record of proceeding to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.