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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]  
WAC 99 228 52519

Office: CALIFORNIA SERVICE CENTER

Date:

JAN 09 2007

IN RE:

Petitioner:

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:

[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the 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 petitioner is a Sikh temple. 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 a priest. The director determined that the petitioner had not established: (1) that the beneficiary entered the United States for the sole purpose of working as a priest; (2) that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition; (3) that the beneficiary was a member of the same religious denomination throughout that same two-year period; or (4) the terms of employment and its ability to pay the beneficiary's proffered salary.

In its appellate decision, issued November 26, 2004, the AAO withdrew findings (1), (3) and (4), and affirmed finding (2), *i.e.*, the finding that the petitioner has not adequately demonstrated that the beneficiary possessed the continuous prior experience required to qualify for the classification sought. At that time, the AAO neither stated nor implied that additional statements from the beneficiary would be sufficient to overcome the adverse finding.

8 C.F.R. § 103.3(a)(1)(iii) states that, for purposes of appeals, certifications, and reopening or reconsideration, *affected party* (in addition to the Citizenship and Immigration Services) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

8 C.F.R. § 103.5(a)(1)(iii)(A) stated that a motion must be signed by the affected party or the attorney of record. 8 C.F.R. § 103.5(a)(1)(i) permits the reopening of a proceeding only "when the affected party files a motion." Here, the motion was not filed by an affected party, but rather by the beneficiary's attorney. Because the beneficiary is not an affected party, neither is his attorney, and the attorney has not claimed to represent anyone other than the beneficiary in this matter. Therefore, the motion has not been properly filed, and there is no provision to allow the acceptance of the motion. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The motion has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the beneficiary's attorney. Therefore, the motion has not been properly filed, and cannot be accepted.

Even if an affected party had filed the motion, another issue would prevent its acceptance. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). If the notice is served by mail, 8 C.F.R. § 103.5a(b) adds three days to the response period. The AAO rendered its appellate decision on November 26, 2004. Therefore, the period in which to file a motion to reopen ended 33 days later, on Wednesday, December 29, 2004.

8 C.F.R. § 103.5(a)(1)(iii)(E) requires that the motion must be submitted to the office maintaining the record upon which the unfavorable decision was made, *i.e.*, the California Service Center. The petitioner submitted the motion to the San Francisco District Office, which was not the proper venue for filing. Even then, that office did not receive the motion until March 15, 2005, well after the expiration of the 33-day filing period. The untimely submission is further compounded by the beneficiary's failure to submit the motion to the proper office. The available evidence indicates that the California Service Center did not receive the motion until January 10, 2006, over a year after the filing deadline for a timely motion.

We acknowledge that 8 C.F.R. § 103.5(a)(1)(i) allows that late filing of a motion to reopen may be excused, but only at the discretion of Citizenship and Immigration Services. The beneficiary's attorney states that the beneficiary "contends that the late filing may be excused because the delay was reasonable and was beyond [his] control." The attorney does explain the delay or otherwise elaborate on this vague assertion. Simply repeating a phrase from the regulatory language does not entitle a late filer to this discretionary relief.

The "new, material evidence" submitted on motion consists of the results of a polygraph test of the beneficiary. It took another three weeks for the beneficiary's attorney to obtain the results. We acknowledge that the waiting period between taking the test and obtaining the results may well have been beyond the beneficiary's control, but the delay in obtaining the test results is not what caused the motion to be untimely. The beneficiary did not even take the test until February 1, 2005, over a month after the motion was due. Leaving aside the question of whether or not a polygraph test report constitutes "new evidence" sufficient to warrant reopening of the proceeding (an issue which the AAO will not stipulate here), the beneficiary has not shown that the delay in seeking the test was reasonable or beyond his control.

As set forth above, the present motion was untimely filed at the wrong location by someone other than an affected party. Thus, the filing fails to meet several of the regulatory requirements, any one of which would by itself require dismissal pursuant to 8 C.F.R. § 103.5(a)(4). Pursuant to 8 C.F.R. § 103.5(a)(1)(iii)(B), the filing fee is nonrefundable.

**ORDER:** The motion is dismissed.