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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

C1

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 10 2010

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:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the finding 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,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected the petitioner's appeal as untimely. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The rejection of an appeal is not a decision as such, so much as a refusal to render a decision. In the absence of a valid appeal or motion, there is nothing on which the AAO can base a decision. Because the AAO had rejected the petitioner's appeal, there is no appellate decision for us to reopen in this proceeding. Furthermore, we find the petitioner's factual claims on motion to be without merit.

In its rejection notice, dated June 16, 2010, the AAO stated:

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 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).

The record indicates that the director issued the decision on Wednesday, March 24, 2010, and properly notified the petitioner that it had 33 days to file the appeal. The appeal was dated and postmarked April 26, 2010, the last day for timely filing; the director did not receive the appeal on that date. The director received the appeal the next day, Tuesday, April 27, 2010, 34 days after the decision was issued. Accordingly, the appeal was untimely filed. The director erroneously annotated the appeal as timely and forwarded the matter to the AAO.

On motion, counsel states:

As per the USCIS [U.S. Citizenship and Immigration Services] the denial letter of March 24 2010 indicated that the appeal should be filed within 33 [days] from the date of the letter. As per our calculation the 33 days should have been counted from date to date eg., March 24, 2010 to April 24, 2010 as 30 days and additional 3 days should have been April 27, 2010 which was the date the actual case reached the USCIS office.

Counsel's argument rests on the false presumption that March has 30 days. Because March has 31 days, counsel's own logic proves that USCIS received the appeal on the 34<sup>th</sup> day. Even if we disregard the dates entirely, the record shows that the petitioner mailed the appeal on a Wednesday and USCIS received it on a Tuesday. As a matter of simple arithmetic, the 33<sup>rd</sup> day after any Wednesday will always be a Monday.

In *Lagandaon v. Ashcroft*, 383 F.3d 983, 986 (9th Cir. 2004), the Ninth Circuit Court of Appeals observed that the period from January 1 to December 31 is recognized as a year. The Ninth Circuit also cited *Griffith v. Bogert*, 59 U.S. 158, 159 (1855), in which the United States Supreme Court held that

the 18-month period that began on November 1, 1819, ended on April 30, 1821. By the same logic, the period from March 25, 2010 (the first day of the appeal period) to April 27, 2010 amounts to 34 days: the last seven days in March (25, 26, 27, 28, 29, 30 and 31) plus the first 27 days in April. We note that the present matter arose within the geographic jurisdiction of the Ninth Circuit.

Neither the Immigration and Nationality Act nor the regulations grant the Board of Immigration Appeals authority to extend the 30-day time limit for filing an appeal to the Board. *Matter of Liadov*, 23 I&N Dec. 990 (BIA 2006). *Liadov* allows for very limited circumstances in which an appellate authority can accept a late appeal on certification, but makes it clear that a minor delay in delivery is not one of those circumstances. *Id.* at 992. Even then, the petitioner's appeal was not late because of a delivery delay. Rather, as we have already noted, the petitioner in the present proceeding did not mail the appeal until the day of the filing deadline, and therefore there was no way that USCIS could have received the appeal in a timely manner. An appeal which is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

We find that the AAO properly rejected the appeal as untimely filed. Because the petitioner has not shown that the AAO was mistaken in rejecting the appeal as untimely, we will not address the merits of the petition or the appeal here.

**ORDER:** The motion is dismissed.