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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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DATE **APR 02 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have
been returned to the office that originally decided your case. Please also note that any further inquiry 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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

General. Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter . . . must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations

As it pertains to the proper filing of an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides:

Filing Appeal. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by §103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on February 26, 2010. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal and listed the proper fee for an appeal. The notice further advised: "Your notice of appeal must be filed with this office at the address at the top of this page." The notice concluded: "**The appeal may not be filed directly with the Administrative Appeals Office. The appeal must be filed at the address at the top of this page.**" (Bold emphasis in original.)

Counsel dated the appeal March 16, 2010. However, despite the clear instructions in the director's notice and on the Form I-290B, counsel sent the appeal to the AAO. On March 24, 2010, the AAO returned the appeal as improperly filed with the wrong office. The appeal was received *by the director* on April 5, 2010, 35 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 Director of the California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

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

The AAO will also reject the appeal because the Form I-290B was signed by [REDACTED] who also submitted a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative entering her appearance in the matter before the AAO. Thus, the appeal in this matter has been submitted and filed by [REDACTED] claimed to be associated with [REDACTED] however, the AAO notes that the record does not contain a Form G-28 from any member of this law firm. Further, [REDACTED] did not complete the instructions in part C which states “the attorney or accredited representative of record previously filed Form G-28 in this case, and my appearance as an attorney or accredited representative is at his or her request (*If you check this item, also complete item A or B above in Part 2, whichever is appropriate.*)” The AAO also notes that this Form G-28 was submitted on behalf of the beneficiary and not the petitioner, although it was not signed by either the beneficiary or the petitioner.

The regulation governing representation in filing immigration petitions and/or applications with United States Citizenship and Immigration Services (USCIS) is found at 8 C.F.R. § 103.2(a)(3), which provides in pertinent part that:

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.2 of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter.

The regulation at 8 C.F.R. § 1.2 states:

The term *attorney* means any person who eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that, for purposes of appeals, certifications, and reopening or reconsideration, *affected party* (in addition to United States Citizenship and Immigration Services [USCIS]) means the person or entity with legal standing in a proceeding. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I) states that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee USCIS has accepted will not be refunded.

The appeal has been filed by [REDACTED] who is not an attorney in good standing with any state, possession, territory, commonwealth or the District of Columbia. [REDACTED] is also not an accredited representative of a qualified non-profit religious, charitable, social service or similar organization established in the United States, so recognized by the Department of Justice, Board of Immigration Appeals pursuant to 8 C.F.R. § 1292.2. Further, the appeal was filed on behalf of the beneficiary, who does not have standing in this case to file the appeal. Therefore, the appeal has not been properly filed

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and must be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1)¹. Here, the appeal was filed not by the petitioner, nor by any licensed attorney or accredited representative of the petitioner.

For the two reasons listed above, the appeal will be rejected.

ORDER: The appeal is rejected.

¹ Because the petitioner is not represented by an attorney, the AAO does not recognize Ms. Tiekou in this proceeding.