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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

C1

[REDACTED]

DATE: **APR 19 2012** OFFICE: CALIFORNIA SERVICE CENTER [REDACTED]

IN RE:

[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 decision 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 petitioner appealed that decision. The director treated the appeal as a motion to reopen, and withdrew the denial. The director then denied the petition a second time, on different grounds. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed.

The petitioner is a member church of the [REDACTED]. 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 minister. The director determined that the petitioner had not established that the beneficiary had the required two years of continuous, lawful work experience immediately preceding the filing date of the petition. In addition, the director found that the petitioner failed to submit the required employer attestation at the time of filing the petition.

The petitioner filed the Form I-360 petition on February 18, 2009. The director denied the petition on June 4, 2009, stating that the petitioner had not submitted evidence of the beneficiary's employment from 2007 to 2009. On appeal from that decision, counsel stated that the petitioner had submitted documentation from the Internal Revenue Service and other sources. The director treated the appeal as a motion, as permitted by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(iii), and continued with the adjudication of the petition.

The director later denied the petition for a second time on August 20, 2010, on different grounds, specifically the beneficiary's lack of lawful immigration status and the petitioner's failure to submit an employer attestation at the time of filing. *See* 8 C.F.R. §§ 204.5(m)(4), (7) and (11).

The USCIS regulation at 8 C.F.R. § 103.2(a)(1) provides, in pertinent part:

General. Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

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 must submit 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 must submit the complete appeal including any supporting brief as indicated in the applicable form instructions within 30 days after service of the decision.

If the decision was mailed, the petitioner must file the appeal within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of submission, 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 Friday, August 20, 2010. The director properly advised: "Your notice of appeal must be filed with this office at the address at the top of this page within 30 days of the date of this notice (33 days if this notice was mailed to you)." The notice concluded: "**The appeal may not be filed directly with the AAO. The appeal must be filed at the address at the top of this page**" (emphasis in original). The address at the top of the page is the address of the California Service Center.

Counsel dated the appeal September 4, 2010, although the postmark on the original envelope reads September 14, 2010. Despite the clear instructions in the director's notice and on the Form I-290B, counsel sent the appeal to the AAO, which received the appeal on September 16, 2010. On September 17, 2010, the AAO returned the appeal as improperly filed with the wrong office. The petitioner, through counsel, remailed the appeal on Wednesday, September 22, 2010, which was the deadline for timely filing of the appeal. The director received the appeal on Thursday, September 23, 2010, 34 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. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and, when filed, be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements when filed shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal did not meet the requirements of a motion to reopen or a motion to reconsider when it was filed. Counsel, in the second appeal, repeats the assertions from the first appeal even though the two decisions dealt with different grounds for denial. Counsel then states: "The issue is his employment not his immigrati[o]n status," but review of the second denial notice shows this statement to be incorrect. The appeal does not address the grounds for denial set forth in the August 20, 2010 denial notice. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2). Even if the petitioner had timely filed the appeal, the AAO would have summarily dismissed the appeal under the regulation at 8 C.F.R. § 103.3(a)(1)(v).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.