

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



DATE: DEC 03 2012

OFFICE: CALIFORNIA SERVICE CENTER



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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected an improperly filed appeal and instructed the director to reissue the decision. The director reissued the decision, and the petitioner has filed an appeal. The AAO will reject the appeal as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) requires that the affected party or the attorney or representative of record must file the complete appeal within 30 days of service of the unfavorable decision. Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b).

Under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.2(a)(1), very 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. A benefit request which is not . . . submitted with the correct fee(s) will be rejected. 8 C.F.R. § 103.2(a)(7). Therefore, USCIS will not consider a benefit request, such as an appeal, to be properly filed until and unless it includes the correct fee.

The director issued the decision on April 18, 2012, and gave notice to the petitioner that it had 33 days to file the appeal. The petitioner dated the Form I-290B Notice of Appeal May 17, 2012, but the director did not receive it until May 23, 2012, 35 days after the denial date. This filing date would have been untimely even if the petitioner had properly filed the appeal on that date. The record shows, however, that the director rejected the appeal for including an incorrect fee. The petitioner resubmitted the appeal with the proper fee on June 28, 2012, 69 days after the denial date. 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 marked the appeal as untimely, but did not consider the untimely appeal as a motion. Instead, the director forwarded the matter to the AAO.

Because the appeal was untimely filed, the AAO must reject the appeal.

ORDER: The appeal is rejected.