

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

[REDACTED]

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Date: **DEC 18 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*WRosenberg*  
f Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition on May 2, 2006. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the preference visa petition stating the reasons therefore and subsequently exercised her discretion to revoke the approval of the petition on June 23, 2010. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now again before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed.

The petitioner is a church corporation. 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 pastor in San Francisco, California and a representative of the petitioning organization to Hispanic ministers in the United States. The director found that the petitioner had not submitted sufficient evidence to overcome the grounds for revocation including questions raised in the notice of intent to revoke as to whether the beneficiary has been continuously employed in a full time ministerial position. Additionally, the director determined that there were inconsistencies in the petitioner's evidence which cast doubt on the evidence offered in support of the visa petition. The director also determined that the beneficiary had failed to maintain his lawful R-1 nonimmigrant status and that the petitioner had not established that the petitioner and the beneficiary's employer are members of the same religious denomination. In dismissing the appeal, the AAO agreed with the director's determinations regarding the inconsistencies in the petitioner's evidence and the petitioner's failure to overcome the grounds for revocation concerning the continuity of the beneficiary's employment, and withdrew the director's findings on the remaining issues.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party or the attorney or representative of record must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed 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 AAO issued its decision dismissing the motions on May 14, 2012. The instant Form I-290B was not received by the service center until June 19, 2012 or 36 days after the decision was issued. Accordingly, the motions were untimely filed.

**ORDER:** The motion to reopen and the motion to reconsider are dismissed.