

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 19 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]
[REDACTED]

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:

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition on September 14, 2009. On further review, the director determined that the beneficiary was not eligible for the visa preference classification. Accordingly, the director issued a Notice of Intent to Revoke the approval of the preference visa petition and subsequently exercised her discretion to revoke the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal.

The petitioner is a church. 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 priest. In the Notice of Intent to Revoke, issued on April 19, 2012, the director found that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition. The director afforded the petitioner thirty days to offer evidence in support of the petition and in opposition to the proposed revocation. In the final decision, the director found that the petitioner had failed to respond to the Notice of Intent to Revoke.

In order to properly file an appeal, the regulation at 8 C.F.R. § 205.2(d) provides that revocations of approvals must be appealed within 15 days after the service of notice of the revocation. If the decision was mailed, the appeal must be filed within 18 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. *See* 8 C.F.R. § 103.2(a)(7)(i). An appeal that is not filed within the time allowed will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(B)(i).

The record indicates that the director revoked the approval of the petition in a decision dated June 18, 2012, which was mailed on June 19, 2012. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b). Although the Form I-290B, Notice of Appeal or Motion, was dated July 24, 2012, it was not received until July 27, 2012, or 38 days after the decision was served. Accordingly, the appeal was not timely 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.

The AAO further notes that 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 U.S. Citizenship and Immigration Services (USCIS)) means the person or entity with legal standing in a proceeding. The USCIS regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(1) 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, USCIS will not refund any filing fee it has accepted.

Here, the party that filed the appeal was not the petitioner, but rather an attorney, [REDACTED]. Accompanying the I-290B, Notice of Appeal was a G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing [REDACTED] to represent the beneficiary, [REDACTED], on appeal. Because [REDACTED] did not file the petition, he is not an affected party, and therefore his attorney has no standing to file an appeal on the petitioner's behalf.¹

Even if properly filed, the AAO would summarily dismiss the appeal. As stated above, the director revoked the petition based on the petitioner's failure to respond to the April 19, 2012 Notice of Intent to Revoke. On appeal, counsel for the petitioner makes no statement about the petitioner's failure to respond to the notice. Instead, counsel discusses the procedural history of the instant petition and argues that revocation in this case "goes against the public interest in fostering the public's trust in government organizations including USCIS."

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

The petitioner has not specifically addressed the reasons stated for denial and offers no substantive basis for the filing of the appeal. The appeal would therefore have been summarily dismissed if it had been timely filed by an affected party.

ORDER: The appeal is rejected.

¹ A previously submitted G-28 authorized [REDACTED] to represent the petitioner for the filing of the Form I-360 petition. However, the regulation at 8 C.F.R. § 292.4(a) requires that a new G-28 must be submitted on appeal to the AAO "to authorize representation in order for the appearance to be recognized by DHS." Accordingly, the AAO cannot recognize [REDACTED] as authorized to represent the petitioner on appeal.