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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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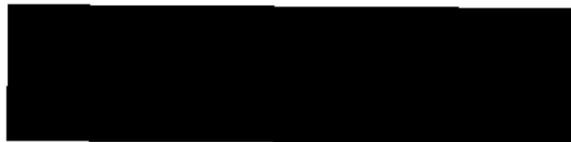
Date: FEB 14 2012

Office: CALIFORNIA SERVICE CENTER



IN RE:

Petitioner:  
Beneficiary:



PETITION: 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, counsel asserts:

In response to the denial notice dated 05/09/2009 for the filing of the I-360 [REDACTED], . . ., we filed an appeal (I-129B) [*sic*] with the CSC via FedEx and received confirmation of receipt of this filing [REDACTED].

A copy of the same was to be submitted and filed at the AAO in Washington, D.C. via regular mail, however, it was erroneously sent to the CSC, which followed the original I-129B filing. We were unaware of this mistake until we received a notice from the CSC office dated 06/17/09 stating that there was already a motion opened and pending, and referenced [REDACTED] as the pending case. See attached copy of notice and returned envelope with CSC stamp.

This created confusion on the part of our office since we were not aware of any prior motions filed by predecessor counsel, on a prior I-360 filed in 2007 and assumed (incorrectly) that the CSC letter referencing a pending motion was associated with this prior filing ie. a form M-188 motion to re-open based on an abandonment denial (See notice of decision 01/04/08)

Although we did receive a notice informing us of the transfer of the I-129B [*sic*] from the CSC to the AAO in Washington, we did not receive a “briefing schedule[,]”[] which was a customary procedure from the court. This further re-enforced the wrong assumption of a pending (prior) action which required resolution before any further activity would occur on our part ie. filing of brief. Neither petitioner church nor [the self-petitioner] caused these delays.

Taking the assumption that the I-129B [*sic*] was improperly filed as well as a misunderstanding as to a pending motion on a previously filed I-360 by another attorney and the fact that we never received a “briefing schedule,” no further action was taken, awaiting resolution of the “pending motion[.]”

The May 11, 2010 AAO Order came as a complete surprise, warranting a further review of the activity which revealed the events as outline above. Kindly exercise your discretion allowing this excuse for late filing since the delay was beyond the control of the petitioner. The delay was caused by our mistake and inadvertence.

Counsel admits that the failure to submit a substantive appeal belongs to his office. He asserts that the delay was beyond the control of the petitioner. However, as the petitioner's legal representative, counsel's actions are imputed to the petitioner. Furthermore, counsel does not assert, and submits no evidence, that the AAO's summary dismissal of the appeal was in error.

As the petitioner failed to present new facts supported by documentary evidence in its motion to reopen to establish that the AAO's decision was in error, the petitioner's motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.