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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

[REDACTED]

C1

DATE **FEB 21 2012**

Office: TEXAS SERVICE CENTER

[REDACTED]

IN RE:

Petitioner:

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:

[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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. ^ 103.5. 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. Please be aware that 8 C.F.R. ^ 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, initially approved the employment-based immigrant visa petition but later revoked that petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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. The Notice of Revocation, issued October 4, 2005, advised the petitioner of the 15-day deadline. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. The appeal was filed on or about October 22, 2009, over four years after the decision was rendered. Accordingly, the appeal was untimely filed.¹

On the Form I-290B Notice of Appeal and in an accompanying brief, counsel for the petitioner states that the Notice of Revocation was never received by the petitioner as an explanation for the untimeliness of the appeal. The regulation at 8 C.F.R. ^ 103.5a(a)(1) provides that [r]outine service consists of mailing a copy by ordinary mail addressed to a person at his last known address, and 8 C.F.R. ^ 103.5a(b) further states that [s]ervice by mail is complete upon mailing. In this case, the only notice received by U.S. Citizenship and Immigration Services (USCIS) regarding any change in the petitioner s address was a Form AR-11 Change of Address Card received by USCIS on October 5, 2009. The service records show that the Notice of Revocation was mailed to the petitioner at its address of record at the time and was therefore properly served on October 4, 2005.

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 Texas 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.

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

ORDER: The appeal is rejected.

¹ The most recent action by USCIS regarding this matter took place on December 8, 2008, when the AAO rejected an appeal filed by the beneficiary of the petition for lack of standing. Even if we were to consider the instant appeal to be an appeal of that decision, more than 10 months have elapsed between that action and the filing of the appeal. Additionally, such an appeal would be rejected as the regulations make no provision for an AAO decision to be appealed to the AAO.