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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: OFFICE: CALIFORNIA SERVICE CENTER

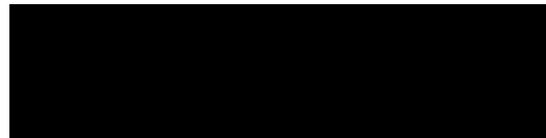
FILE: 

**JAN 31 2012**

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:



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,

*Elizabeth McCormack*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the employment-based immigrant visa petition. The matter was later transferred to the California Service Center. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The petition was subsequently reopened and again revoked. The matter is now before Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed; however, the matter will be remanded to the director for consideration as a motion to reopen and reconsider.

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 pastor. On February 10, 2010, the director revoked the approval of the petition.<sup>1</sup> Counsel's appeal was received by U.S. Citizenship and Immigration Services (USCIS) on March 9, 2010, 27 days after the decision was issued. An appeal of a revocation must be filed within 15 days after service of the decision. *See* 8 C.F.R. § 205.2(d). If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt by USCIS. *See* 8 C.F.R. § 103.2(a)(7)(i).

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. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). In addition, a motion to reconsider must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The matter will therefore be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

**ORDER:** As the appeal was untimely filed, the appeal must be rejected.

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<sup>1</sup> Section 205 of the Act permits the director to revoke the approval of a petition "at any time, for what he deems to be good and sufficient cause."