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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

C1

[Redacted]

DATE **JUN 29 2012** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

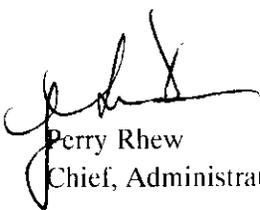
PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:  
[Redacted]

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,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition, which 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. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must submit the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal 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).

On appeal, counsel for the petitioner asserts that, although the director's decision was dated July 28, 2011, "the decision was only mailed to us on September 16, 2011." The petitioner submits a record showing that counsel's office contacted United States Citizenship and Immigration Services (USCIS) on September 23, 2011 regarding "Non-Delivery of Denial Notice," and also submits a copy of an envelope from USCIS addressed to counsel's office with a postmark of September 16, 2011. Counsel does not assert that the petitioner failed to receive the original decision nor does the record indicate that the decision was returned to USCIS as undeliverable.

The regulation at 8 C.F.R. § 103.8(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 that "[s]ervice by mail is complete upon mailing." The service records show that the Form I-292, Decision, was mailed to the petitioner at its address of record on July 28, 2011 and was therefore properly served on that date. It is noted that the service center director properly gave notice to the petitioner that it had 33 days to file the appeal. *Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.*

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.

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.