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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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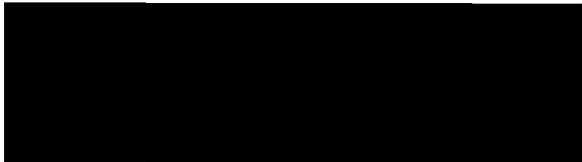
DATE: **MAY 08 2012** OFFICE: CALIFORNIA SERVICE CENTER 

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.

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  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition but the Director, California Service Center, later revoked that approval on notice. The Administrative Appeals Office (AAO) remanded the matter for further consideration. The director again revoked the approval of the petition and certified the decision to the AAO for review. The AAO affirmed the director's decision. The petitioner has filed a motion to reopen and reconsider the decision. The AAO will dismiss the motion.

The petitioner is an Islamic community center including a mosque and a school. It previously sought 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 an imam. The director determined that the petitioner had failed to establish the continued existence of the job offer in place at the time of filing.

On motion, the petitioner submits a brief from counsel and supporting documents.

Every application, petition, appeal, motion, request, or other document . . . , notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(1).

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before USCIS, filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). 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). Therefore, USCIS had to receive a properly filed motion, at the proper location, no later than 33 days after the date of the AAO's dismissal notice.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The phrase "shall be dismissed" indicates that the regulation is a requirement, rather than an option for USCIS or the AAO to exercise at its discretion.

The AAO dismissed the petitioner's appeal on Wednesday, February 1, 2012. The deadline for a timely appeal was 33 days later, Monday, March 5, 2012. On the cover page of the dismissal notice, the AAO advised: "All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion." The instructions to Form I-290B advise: "Do **not** send your appeal or motion directly to the Administrative Appeals Office (AAO)" (emphasis in original). Nevertheless, the petitioner, through counsel, sent the motion directly to the AAO. The AAO received the motion on March 2, 2012, and returned the filing with a note that only the USCIS office where the petitioner had filed the petition could accept the motion. The petitioner, through counsel, mailed the motion to the California Service Center on March 8, 2012. The California

Service Center received the filing the next day, and appears to have forwarded the filing to the Nebraska Service Center, which received the motion on Wednesday, March 14, 2012, 42 days after the date of the AAO's dismissal notice.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) does not provide any circumstances to allow for the untimely filing of a motion to reconsider. The same regulation allows for the untimely filing of a motion to reopen, at USCIS's discretion, only if the petitioner demonstrates that the delay was reasonable and was beyond the control of the petitioner.

Counsel contends that the late filing was beyond the petitioner's control because it was counsel, not the petitioner, who made the untimely filing. The AAO rejects this reasoning, because it would effectively negate the filing deadline for petitioners with legal representation. The petitioner, by hiring legal counsel, did not exempt itself from responsibility for following proper procedure. Counsel acts on the petitioner's behalf, rather than as a separate third party. The delay in proper filing was not beyond the petitioner's control, as the Form I-290B itself contained the relevant information about where to file the motion.

Because the petitioner's filing does not meet all of the requirements of a motion (including timeliness), the AAO must dismiss the motion under the USCIS regulation at 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion is dismissed.