

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]

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Date: **NOV 15 2012** Office: CALIFORNIA SERVICE CENTER [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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

*URosenberg*

f Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

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 youth leader/assistant minister. The director determined that the petitioner failed to establish that the beneficiary had the requisite two years of continuous, lawful, qualifying work experience immediately preceding the filing of the petition and that the petitioner qualifies as a bona fide nonprofit organization. The AAO, in its May 2, 2012 dismissal, agreed with the director's determinations.

The petitioner has filed motions seeking to reopen and reconsider the appeal.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party or the attorney or representative of record must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion 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).

The regulation at 8 C.F.R. § 103.2(a)(7)(i) states, in pertinent part:

An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

The record indicates that the AAO issued its decision dismissing the motions on May 2, 2012. It is noted that the AAO gave notice to the petitioner that it had 30 days to file a motion to reconsider or a motion to reopen, and that the specific requirements could be found at 8 C.F.R. § 103.5. The notice further advised that the record was being returned to the office that made the original decision and that "[a]ll 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."

Although the petitioner initially submitted the Form I-290B, Notice of Motion, on June 6, 2012, USCIS rejected the form, stating that "[t]he check amount is incorrect or has not been provided." The petitioner subsequently filed the Form I-290B with the correct filing fee and it was received by the service center on June 20, 2012, or 49 days after the decision was issued. Accordingly, the motions were untimely filed.

**ORDER:** The motion to reopen and the motion to reconsider are dismissed.