

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



Date: **OCT 15 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:

SELF-REPRESENTED

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,

A handwritten signature in cursive script, appearing to read "Perry Rhew".
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was untimely filed. The AAO rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed.

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 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).*

The record indicates that the AAO rejected the appeal on February 13, 2012. The instant Form I-290B was not received by the service center until April 11, 2012, or 43 days after the decision was issued. Accordingly, the motions were untimely filed.

Further, the motions do not address the appeal that was rejected as untimely filed by the AAO but rather the director's original decision. The petitioner provides no legal authority, and the AAO is unaware of any, that would allow the petitioner to cure a previously late filed appeal by moving to reopen and reconsider the decision that preceded the appeal. Rather, the petitioner bears the burden of establishing that the rejection as untimely was itself in error. The motions do not meet the requirements at 8 C.F.R. 103.5(a).

ORDER: The motions are dismissed.