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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

Date: **SEP 18 2012**

Office: CALIFORNIA SERVICE CENTER

FILE:

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition. The director dismissed subsequent motions to reopen and reconsider on October 28, 2011, December 19, 2011, and March 8, 2012. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 July 15, 2011, the director denied the petitioner due to abandonment, finding that the petitioner failed to respond to a Notice of Intent to Deny (NOID) within the allotted period. On October 28, 2011 and December 19, 2011, the director dismissed a motion to reopen and a motion to reconsider the decision respectively, *finding that the petitioner's filings had not met the definition of a motion*. On January 19, 2012, the petitioner again filed a motion to reopen the original decision to deny the petition for abandonment. The director dismissed the motion as untimely filed.

The petitioner has now filed an appeal of the director's decision to dismiss the January 19, 2012 motion.

On appeal, the petitioner submits a brief, copies of receipt notices from United States Citizenship and Immigration Services (USCIS), and copies of documents already in the record.

The regulation at 8 C.F.R. § 103.2(b)(15) states, in pertinent part: "A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5." The regulation at 8 C.F.R. § 103.5(a)(2) provides the following:

*A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:*

- (i) The requested evidence was not material to the issue of eligibility;
- (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information was complied with during the allotted period; or
- (iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

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 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 record shows that the Form I-292, Decision, was mailed to the petitioner at its address of record on July 15, 2011, and was therefore properly served on that date.

In a brief accompanying its August 12, 2011 motion to reopen, the petitioner asserted that, although it remained at the same address until August 4, 2011, it “did not receive the denial notice or any previous notice that the USCIS may have issued.” The petitioner requested that USCIS mail a copy of the denial decision to “[redacted]” In her decision dismissing the motion, the director noted that the denial notice had been sent to the petitioner’s given address and had not been returned as undeliverable, and that there was no evidence that USCIS received notice of a change of address for the petitioning organization prior to issuing the decision. The director found that the petitioner’s filing had not met the requirements of a motion and also dismissed a subsequent motion to reconsider for failing to meet the requirements of a motion.

As stated above, on January 19, 2012, the petitioner again filed a motion to reopen and indicated that the motion was being filed based on the director’s July 15, 2011 decision. On March 8, 2012, the director dismissed the motion because it was not filed within 30 days of the denial decision on the petition.

On appeal, the petitioner asserts that it did not receive the July 15, 2011 decision until December 19, 2011, when a copy of the decision was mailed to the petitioner accompanying the director’s dismissal of its motion to reconsider. The petitioner argues that its January 19, 2012 motion to reopen was timely filed, as it was filed within 33 days of December 19, 2011.

The AAO is not persuaded by the petitioner’s argument. The record shows that the decision was properly served on July 15, 2011 according to the requirements of 8 C.F.R. § 103.8(a)(1). Therefore, the motion was not timely filed per 8 C.F.R. § 103.5(a)(1)(i).

Regardless, the regulation at 103.5(a)(6) provides that a decision on a motion may only be appealed if the original decision was appealable to the AAO. Because a denial due to abandonment may not be appealed, the director’s January 19, 2012 decision denying the petitioner’s motion may not be appealed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be rejected.

**ORDER:** The appeal is rejected.