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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 27 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:

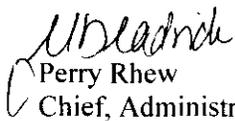
SELF-REPRESENTED

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.

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,


Perry Rhew
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 and a motion to reopen and a motion to reconsider. The matter is now again before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed.

The self-represented petitioner is a church.¹ 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 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. The AAO summarily dismissed a subsequent appeal finding that the petitioner failed to specifically identify any erroneous conclusion of law or statement of fact. The petitioner then filed a motion to reopen and a motion to reconsider. The AAO dismissed the motions.

The petitioner has again 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 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 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.”

The petitioner dated the instant motions May 26, 2012. However, despite the clear instructions in the AAO’s notice and on the Form I-290B, the petitioner sent the motions directly to the AAO. On June 4, 2012, the AAO returned the motions as improperly filed with the wrong office. The motions were received *by the director* on June 13, 2012, or 42 days after the decision was issued. Accordingly, the motions were untimely filed.

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

¹ While the AAO sent a copy of its previous decision to the petitioner’s attorney, the record does not contain a new Form G-28, Notice of Appearance as Attorney or Representative signed by the petitioner. Thus, the AAO considers the petitioner self-represented. The AAO also notes that the Form I-290B, Notice of Appeal or Motion was signed by the attorney [REDACTED]. Accordingly, even if the motions had been timely filed, they would be dismissed for lack of standing. Moreover, the motions would be dismissed as counsel failed to support her motions with any new facts, evidence or legal arguments to demonstrate the AAO’s prior summary dismissal was in error.