



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 01 2013**

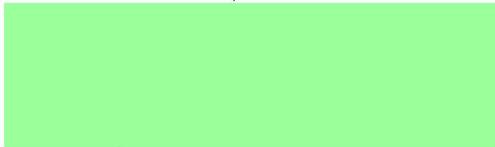
Office: CALIFORNIA SERVICE CENTER

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:



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,

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 previous decision of the AAO will be affirmed, and the petition will remain denied.

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 religious education missionary. 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, in its April 25, 2012 dismissal, agreed with the director's determination and additionally found that the petitioner failed to establish its ability to compensate the beneficiary.

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. *See* 8 C.F.R. § 103.2(a)(7)(i).

The regulation at 8 C.F.R. § 103.2(a)(7)(i) states that "[a] benefit request which is not signed and submitted with the correct fee(s) will be rejected."

The record indicates that the AAO issued its decision dismissing the appeal on April 25, 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.

Although the petitioner initially submitted the Form I-290B, Notice of Motion, on June 1, 2012, USCIS returned the form for lack of signature in the signature block. The petitioner subsequently filed a signed Form I-290B and it was received by the service center on July 26, 2012, or 92 days after the decision was issued. Accordingly, the motions were untimely filed.

Even if timely filed, the instant filing is insufficient to overcome the AAO's determinations as stated in its April 25, 2012 decision.

On motion, counsel for the petitioner argues that the beneficiary held employment authorization "during the relevant periods," and thus did not engaged in unlawful employment during the two-year qualifying period immediately preceding the filing of the petition. The petitioner submits copies of two Employment Authorization Cards issued to the beneficiary with validity dates of October 8, 2003 to February 5, 2004 and October 7, 2008 to February 5, 2010 respectively. As the Form I-360 petition was filed on November 20, 2008, the evidence submitted does not

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establish that the beneficiary held employment authorization throughout the two years immediately preceding the filing of the petition.

Further, neither the brief nor the evidence submitted on motion address the AAO's finding that the petitioner failed to establish its ability to compensate the beneficiary.

Therefore, even if the motions were considered timely filed, which they are not, the petitioner's filing is insufficient to warrant reopening or reconsideration of the instant case.

ORDER: The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated April 25, 2012 is affirmed, and the petition remains denied.