



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

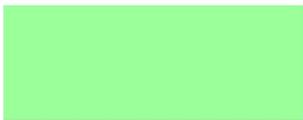


Date: **APR 15 2013** Office: CALIFORNIA SERVICE CENTER FILE:

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.

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 appeal. The AAO will reject the appeal.

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 minister. The director denied the petition on January 6, 2010, finding that the petitioner had not submitted sufficient evidence regarding its finances, location, or corporate status. The director also found that the petitioner had failed to pass a compliance review. The petitioner filed a Form I-290B, Notice of Appeal, on January 29, 2010. On February 21, 2012, the AAO dismissed the petitioner's appeal.

In its decision, the AAO gave notice to the petitioner that, if it believed the AAO inappropriately applied the law in reaching its decision, or had additional information it wished to have considered, 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. On September 24, 2012, the petitioner appealed the AAO's decision rather than filing a motion to reopen or reconsider. Both the Form I-290B and an accompanying letter from counsel refer to the instant filing as an appeal rather than a motion.

The petitioner's September 24, 2012 appeal must be rejected. The AAO does not exercise appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1 (effective March 1, 2003). An appeal of an AAO decision is not properly within the AAO's jurisdiction. Therefore, as the appeal was not properly filed, it will be rejected.

Even if the petitioner had filed a motion, the instant filing would 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 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 AAO issued its decision dismissing the petitioner's appeal on February 21, 2012. The instant Form I-290B was dated August 1, 2012, but was not received by the service center until September 24, 2012 or 216 days after the AAO decision was issued. Accordingly, even if considered as a motion, the instant submission was untimely filed and therefore fails to meet the requirement of 8 C.F.R. § 103.5(a)(1)(i).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is rejected.