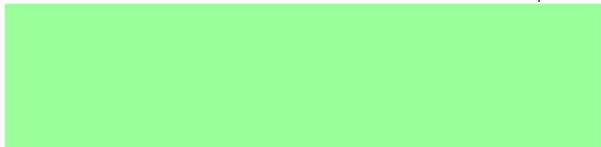


(b)(6)

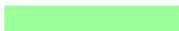
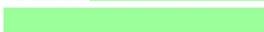
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

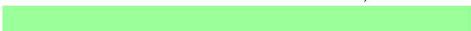


U.S. Citizenship
and Immigration
Services



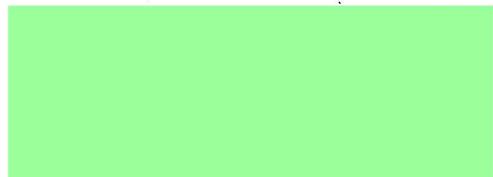
DATE **JAN 02 2013** Office: CALIFORNIA SERVICE CENTER

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:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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) rejected a subsequent appeal. The director reopened the matter and issued a new decision denying the petition on June 27, 2012. The matter is again before the AAO on appeal. The appeal will be rejected as untimely filed.

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. 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 and that the petitioner qualifies as a bona fide non-profit religious organization.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must file the complete appeal 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 mailing, 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, in pertinent part:

An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

As of November 23, 2010, the filing fee is \$630.00 as listed on the instructions for Form I-290B. The regulation at 8 C.F.R. § 103.2(a)(1) provides that “[e]very benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions ... and such instructions are incorporated into the regulations requiring its submission.”

The director originally denied the petition on May 26, 2011. The director properly gave notice to the petitioner that it had 33 days to file the appeal, but mistakenly listed the Form I-290B filing fee as \$585.00. On June 28, 2011, the petitioner submitted the Form I-290B with the incorrect filing fee of \$585.00 and the service center accordingly rejected the application. On July 25, 2011, the petitioner again submitted the Form I-290B with the incorrect filing fee of \$585.00 and it was again rejected by the service center. The Form I-290B with the correct filing fee was received by the service center on August 13, 2011, or 79 days after the decision was issued. On April 19, 2012, the AAO rejected the appeal as untimely filed, noting that **“the director’s error does not negate or take precedence over the regulations or form instructions”** (emphasis added).

The director subsequently reopened and reconsidered the petition. On June 27, 2012, the director issued a new decision denying the petition. The new decision again properly gave notice to the petitioner that it had 33 days to file the appeal, but mistakenly listed the Form I-290B filing fee as \$585.00. The petitioner filed the Form I-290B with the incorrect filing fee of \$585.00 on August 1, 2012. The service center rejected the application based on the submission of the incorrect fee. The

petitioner resubmitted the Form I-290B with the correct filing fee and it was received by the service center on August 22, 2012, or 56 days after the decision was issued. In a letter submitted on appeal, counsel for the petitioner states:

This application was previously filed with a check in the amount of \$585.00. The amount of \$585 is the amount that **your** instructions indicated. However the filing of the Notice of Appeal was rejected because of the incorrect amount.

I hereby respectfully request that the Notice of Appeal be accepted for late filing, as this office was following **your** instructions on your decision dated June 27, 2012.

As previously noted by the AAO in its April 19, 2012 rejection, the director's error does not negate or take precedence over the regulations or form instructions. Further, regardless of the incorrect fee amount, the record indicates that the petitioner first filed the Form I-290B on August 1, 2012, or 35 days after the June 27, 2012 decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the California Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.