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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

DATE **NOV 27 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (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 an assistant pastor. The director determined that the petitioner failed to submit any initial evidence or supporting documentation.

On appeal, the petitioner submits a letter from the petitioner and a letter from the Internal Revenue Service (IRS).

In order to properly file an appeal, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must submit 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 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 service center director issued the decision on January 15, 2013. The service center director gave notice to the petitioner that it had 30 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The record indicates that the Form I-290B, Notice of Appeal or Motion was initially rejected by USCIS as incomplete. The regulation at 8 C.F.R. §103.2(a)(7)(iii) provides that a benefit request that is rejected will not retain a filing date. The complete appeal was received on June 17, 2013, or 153 days after the 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.

Even if properly filed, the AAO would dismiss the appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States –

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2012, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2012, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

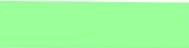
The USCIS regulation at 8 C.F.R. § 103.2(b)(1) provides that “[e]ach benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions.” The regulation at 8 C.F.R. § 103.2(b)(8)(ii) states:

Initial evidence. If all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility, USCIS in its discretion may deny the benefit request for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on September 14, 2012. The petitioner did not submit any of the initial evidence or supporting documentation required by the regulations at 8 C.F.R. § 204.5(m). The director denied the petition on that basis on January 15, 2013.

On appeal, the petitioner states:

We would like to bring to the attention of the U.S. Department of Homeland Security and the reviewing authority that in this case we were never given the opportunity to provide the requested Evidence.



We hereby ask to be given the opportunity to provide evidence in this case.

In denying the petition, the director complied with 8 C.F.R. § 103.2(b)(8)(ii), which provides discretionary authority to request missing initial evidence or deny the benefit request. In this case, the director exercised her discretionary authority to deny the petition for lack of initial evidence.

Furthermore, on appeal, the petitioner submits a copy of a determination letter from the IRS confirming its tax-exempt status under section 501(c)(3) of the code, but fails to provide any of the remaining initial evidence required under the regulations. Accordingly, the petitioner has failed to establish eligibility for the benefit sought.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is rejected.