



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF B-P-C-

DATE: JAN. 4, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a church, seeks to employ the Beneficiary as a nonimmigrant religious worker to perform services as a minister. *See* Immigration and Nationality Act (the Act) § 203(b)(4), 8 U.S.C. § 1153(b)(4). The Director, California Service Center, denied the petition, finding that the Petitioner did not establish that the Beneficiary had two years of qualifying work experience in lawful status. We dismissed the appeal, denied a subsequent motion, and rejected another appeal. The matter is now before us on a motion to reopen. The motion will be denied.

In order to properly file a motion to reopen, the regulation at 8 C.F.R. § 103.5(a) provides that the affected party or the attorney or representative of record must file the complete 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 mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). A failure to file within the period may be excused in the discretion of the Service where it was demonstrated that the delay was reasonable and beyond the control of the applicant or Petitioner. *See* 8 C.F.R. § 103.5(a)(1)(i).

The record reflects that our last decision was issued on February 20, 2015. The Form I-290B, Notice of Appeal or Motion, currently before us was received by U.S. Citizenship and Immigration Services (USCIS) on April 6, 2015, 45 days after the decision was issued. However, it was returned because the check amount was incorrect or had not been provided. The motion was not properly filed until May 5, 2015, 74 days after the decision was issued. The Petitioner has not addressed this delay. Therefore, there is no evidence the delay was reasonable and beyond the Petitioner's control. Accordingly, we decline to exercise our discretion and find that the motion was untimely filed.

Even if it was timely filed, we would nonetheless deny the motion. A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, in our last decision, we rejected the Petitioner's appeal for two separate reasons: first, because we lacked jurisdiction over an appeal of our own previous decision, and second, because the appeal was untimely filed. Currently, on motion, the Petitioner states that '█ made a delivery delay.'

*Matter of B-P-C-*

According to the Petitioner, the appeal was submitted to [REDACTED] on September 20, 2014, for overnight shipping and should have been delivered to USCIS on September 22, 2014.

A review of the record shows that the check used to pay for the appeal was dated September 22, 2014. Therefore, the Petitioner could not have submitted the appeal to [REDACTED] for overnight delivery on September 20, 2014, as claimed, unless it did so without the proper filing fee or with a postdated check. The record shows that the appeal was received by USCIS on September 23, 2014, the day after the check was issued and 34 days after the previous decision was issued. Neither the Act nor the pertinent regulations grant us authority to extend the time limit for filing an appeal. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(I).

Moreover, the Petitioner has not addressed our additional ground for rejecting the appeal for lack of jurisdiction. As we previously stated, we exercise appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii). There is nothing in the regulations allowing for an administrative appeal of an AAO decision.

We further note that our decisions dated December 19, 2012, and August 20, 2014, thoroughly discussed inconsistencies in the record that continue to remain. For instance, we explained in our December 19, 2012, decision that the record is inconsistent with respect to the Petitioner's assertion that the petitioning church is affiliated with [REDACTED] because it had previously stated it was affiliated with [REDACTED]. The Petitioner has not addressed this inconsistency. In addition, since the petition was filed, the Petitioner has alternatively claimed that the Beneficiary worked for the Petitioner "on several occasions," "on a temporary basis," full time, and then full time except during a four-month sabbatical. The Petitioner now submits two letters stating that the Beneficiary was a full-time student for four months in 2010 while on sabbatical from the church, receiving only "meager living expenses but [no] other form of compensation." However, the Petitioner has not sufficiently explained its evolving description of the Beneficiary's work experience and does not address why documentation in the record shows that the Beneficiary continued to be paid at the same rate, showing full-time employment, during the time period he was claimed to be on sabbatical.

The motion is denied as untimely filed. 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 motion to reopen is denied.

Cite as *Matter of B-P-C-*, ID# 15214 (AAO Jan. 4, 2016)