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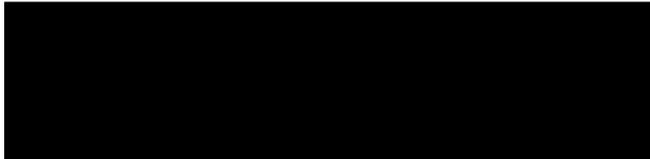
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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**PUBLIC COPY**

B13



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 09 2010

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

2 Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date USCIS receives the submission properly signed and executed, with the required filing fee attached. *See* 8 C.F.R. § 103.2(a)(7)(i).

The director denied the petition on Wednesday, December 2, 2009, which means that the last day to file a timely appeal would have been Monday, January 4, 2010. Also on December 2, 2009, the director also denied an accompanying application to extend the beneficiary's stay as an R-1 nonimmigrant religious worker. In the notice denying the petition, the director properly notified the petitioner that the petitioner had 33 days to file an appeal, and that "[a] fee of \$585.00 is required." In the separate notice denying the application for extension of stay, the director stated: "If an appeal to the petition denial is filed and sustained, and if the beneficiary is otherwise eligible for extension of status, the USCIS will, on its own motion, grant the requested extension. THERE IS NO FEE REQUIRED FOR THIS ACTION" (capitalization in original).

On December 23, 2009, the director received the petitioner's Form I-290B Notice of Appeal or Motion, without the required fee. On December 24, 2009, the director returned the petitioner's submission because the petitioner had not properly filed it with the required fee.

On Monday, January 4, 2010, the petitioner again mailed the Form I-290B, this time with the required fee. The director received the appeal on Tuesday, January 5, 2010, 34 days after the decision was issued. This appeal was not timely filed.

The petitioner included a photocopy of the December 2, 2009 denial notice, on which the petitioner had used an orange highlighter to emphasize the phrase "THERE IS NO FEE REQUIRED FOR THIS ACTION." The petitioner also circled this phrase and drew two arrows pointing to it. That phrase, however, appeared on the denial of the extension application (which, under the regulation at 8 C.F.R. § 214.1(c)(5), cannot be appealed). The separate denial of the Form I-129 petition specifically advised the petitioner that the appeal carried a \$585 fee. The petitioner's selective reading of the denial notice does not waive the fee requirement, nor does it require USCIS to consider the initial December 23, 2009 submission to be a properly filed appeal.

The director erroneously annotated the appeal as timely and forwarded the matter to the AAO, but this does not overcome the untimely filing of the appeal.

**ORDER:** The appeal is rejected.