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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

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

D13



DATE: **DEC 05 2011** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The petitioner originally filed an appeal to the decision, at a time when the regulations did not permit such appeals. The director determined that the filing did not qualify for consideration as a motion to reopen or reconsider, and therefore dismissed the filing. The director then moved to reopen the proceeding, and again denied the petition. The director forwarded the petition to the Administrative Appeals Office (AAO), which rejected the prior appeal because the director had not yet issued a procedurally correct new decision on the reopened proceeding. The director has denied the petition for a third time, and the petitioner has appealed that decision to the AAO. The AAO will reject the appeal as untimely, and return the matter to the director for consideration as a motion to reopen and reconsider.

The petitioner initially submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, naming [REDACTED] as the petitioner's representative. Subsequently, the petitioner submitted a new Form G-28 from [REDACTED]. In correspondence received in September 2009, the beneficiary, stating that she wrote on the petitioner's behalf, stated that future correspondence should go to [REDACTED], "not [the] other company, [REDACTED]"

In prior correspondence, the AAO advised that it cannot consider [REDACTED] to be the petitioner's attorney or representative. [REDACTED] has not shown that he is either an attorney, as defined by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 1.1(f), or an accredited representative as defined by the regulation at 8 C.F.R. § 1.1(j). There is no evidence that [REDACTED] is qualified to represent the petitioner under the regulatory requirements listed at 8 C.F.R. § 292.1.

Under the USCIS regulation at 8 C.F.R. § 292.4(a), an attorney or representative must submit a new Form G-28 on appeal. The petitioner's latest submission contains no new Form G-28 from [REDACTED] and no evidence that [REDACTED] participated in preparing or filing the appeal. Given the absence of evidence of [REDACTED] involvement, and the prior statement that he is no longer the petitioner's attorney of record, the AAO considers the petitioner to be self-represented.

In order to properly file an appeal, the 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 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. § 103.5a(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). USCIS will not consider the appeal properly filed unless accompanied by the proper fee. *Id.*

The record indicates that the service center director issued the decision on November 10, 2010. The service center director properly gave notice to the petitioner that it had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit. The director stated that the appeal fee would be \$585. This amount was correct at the time, but the fee increased to \$630 on November 23, 2010 (a date that occurred during the 33-day appeal period).

According to notations in the record, the petitioner attempted to file Form I-290B on December 9, 2010, with the incorrect filing fee. The director returned the filing because the fee was incorrect. The petitioner then refiled the appeal, with the correct fee, on December 30, 2010, 50 days after the director issued the decision. 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 matter will therefore be returned to the director. If the director determines that the late appeal meets the requirements of a motion, the director shall grant the motion and issue a new decision.

The AAO notes that, while the petition was pending, USCIS published new regulations for nonimmigrant religious worker petitions. Supplementary information published with the new rule specified: "All cases pending on the rule's effective date . . . will be adjudicated under the standards of this rule. If documentation is required under this rule that was not required before, the petition will not be denied. Instead the petitioner will be allowed a reasonable period of time to provide the required evidence or information." 73 Fed. Reg. 72276, 72285 (Nov. 26, 2008).

The new regulations include substantial new evidentiary requirements (including, but not limited to, an employer attestation and financial and tax documents). The director has not yet taken these new requirements into account, or provided the petitioner with an opportunity to submit the newly required evidence.

The AAO also notes that, in an attempt to demonstrate its continued existence at [REDACTED] the petitioner has submitted a utility bill dated August 2010. The director dismissed this evidence, stating that it does not show that the petitioner exists at that address. The director did not explain this conclusion. The director, instead, relied on information from a site inspection that took place at a different address [REDACTED]. There is no evidence that the director conducted or attempted any site inspection at [REDACTED].

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

ORDER: The appeal is rejected, and returned to the director for consideration as a motion.