

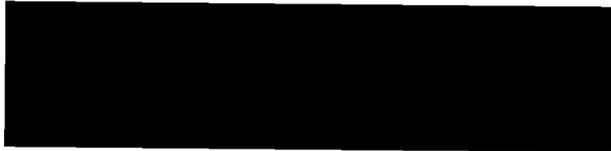
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



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Date: DEC 12 2011

Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE:

Petitioner:  
Beneficiary:



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:



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 on March 30, 2009 and dismissed the petitioner's motion to reopen and reconsider on October 1, 2009. On April 12, 2010, the director reopened the petition pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and again denied the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and to reconsider. The motions will be dismissed.

The motions are untimely. Under the provisions of 8 C.F.R. § 103.5(a)(1)(i), a motion to reopen and to reconsider must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The regulation at 8 C.F.R. § 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. The AAO issued its decision on January 11, 2011. The petitioner's motions were received by the service center on March 1, 2011, 49 days after the AAO issued its decision. The motions were therefore filed untimely.

The regulation at 8 C.F.R. § 103.5(a) provides that the agency may, in its discretion, accept a motion to reopen beyond this time frame if the petitioner demonstrates that the delay was reasonable and beyond his or her control. There is no such provision for a motion to reconsider. In its decision, the AAO specifically advised the petitioner that all motions must be filed with the office that originally decided its case. The instructions to the Form I-290B also clearly state that a motion should not be sent directly to the AAO. Despite these clear instructions, however, the petitioner submitted Form I-290B directly to the AAO, who received it on February 11, 2011 and returned it on February 15, 2011 with further directions as to where the motion must be filed. In a letter dated February 28, 2011 counsel requests that the motions be accepted as timely filed as they were timely received by the AAO. While the motions were received by the AAO within the 30-day time period for filing, the motions were not consider properly filed until they were filed with the service center.

Accordingly, the petitioner's motions are considered to be untimely filed. The petitioner has failed to provide any argument or evidence to demonstrate the late filing of the motion to reopen was reasonable or beyond his control.

**ORDER:** The motions are dismissed. The motions are dismissed. The AAO's January 11, 2011 decision is affirmed, and the petition remains denied.