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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

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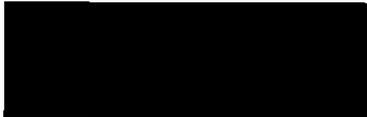


DATE: NOV 10 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:



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, initially denied the employment-based nonimmigrant visa petition for abandonment, but reopened the proceeding on the petitioner's motion. The director then denied the petition on its merits. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The petitioner then filed a motion to reopen and reconsider the AAO's decision. The AAO will dismiss the motion as untimely filed.

The petitioner is a church affiliated with Grupo de Unidad Cristiana de Mexico, a Christian denomination based in Tijuana, Mexico. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a children's outreach minister. The director determined that the petitioner had not shown that the position is a religious occupation. The AAO dismissed the petitioner's appeal from the director's decision, with an additional finding that the petitioner had not submitted sufficient evidence regarding the beneficiary's intended compensation.

Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form. 8 C.F.R. § 103.2(a)(1).

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before USCIS, filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. 8 C.F.R. § 103.5a(b). Therefore, USCIS had to receive a properly filed appeal no later than 33 days after the date of the AAO's dismissal notice.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The phrase "shall be dismissed" indicates that the regulation is a requirement, rather than an option for USCIS or the AAO to exercise at its discretion.

The AAO dismissed the petitioner's appeal on Friday, December 17, 2010. The deadline for a timely appeal was 33 days later, Wednesday, January 19, 2011. On the cover page of the dismissal notice, the AAO advised: "All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion." The office that originally decided the petitioner's case was the California Service Center.

The instructions to Form I-290B advise: "Do **not** send your appeal or motion directly to the Administrative Appeals Office (AAO)" (emphasis in original). Nevertheless, the petitioner, through counsel, sent the motion directly to the AAO. The AAO received the motion on January 18, 2011, and returned the filing with a note that only the USCIS office that denied the original petition could

accept the motion. The California Service Center received the motion on Friday, January 28, 2011, 42 days after the date of the AAO's dismissal notice.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) does not provide any circumstances to allow for the untimely filing of a motion to reconsider. The same regulation allows for the untimely filing of a motion to reopen, at USCIS's discretion, only if the petitioner demonstrates that the delay was reasonable and was beyond the control of the petitioner. The petitioner has not made such a showing here. The petitioner disregarded the instruction not to file the motion directly with the AAO. This error was not beyond the petitioner's control, as the Form I-290B itself contained the relevant information about where to file the motion.

Because the petitioner's filing does not meet all of the requirements of a motion, the AAO must dismiss the motion under the USCIS regulation at 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.