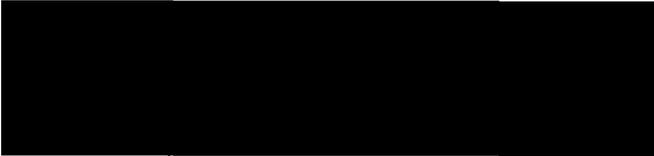


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D13

Date: **APR 24 2012** 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:

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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The Form I-290B, Notice of Appeal or Motion, is signed by [REDACTED] and a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, indicates that [REDACTED] is an accredited representative of [REDACTED]

The regulation at 8 C.F.R. § 292.1(a) provides that a person entitled to representation may be represented by an accredited representative who is “[a] person representing an organization described in § 292.2 of this chapter who has been accredited by the Board.” The regulation at 8 C.F.R. § 292.2 provides:

- (a) Qualifications of organizations. A non-profit religious, charitable, social service, or similar organization established in the United States and recognized as such by the Board may designate a representative or representatives to practice before the Service alone or the Service and the Board (including practice before the Immigration Court). . . .

• • •

- (d) *Accreditation of representatives.* An organization recognized by the Board under paragraph (b) of this section may apply for accreditation of persons of good moral character as its representatives. . . . The Board may approve or disapprove an application in whole or in part and shall inform the organization and the district director of the action taken with regard to an application. The accreditation of a representative shall be valid for a period of three years only; however, the accreditation shall remain valid pending Board consideration of an application for renewal of accreditation if the application is filed at least 60 days before the third anniversary of the date of the Board’s prior accreditation of the representative. . . .
- (e) *Roster.* The Board shall maintain an alphabetical roster of recognized organizations and their accredited representatives.

The Recognition and Accreditation Roster maintained on the Department of Justice website reveals that while [REDACTED] is an accredited organization, [REDACTED] is not an accredited representative of that organization.¹

¹ www.justice.gov/eoir/statspub/raroster_files/raroster-orgs-reps.htm, accessed on April 13, 2012, a copy of which is incorporated into the record.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) Meaning of affected party. For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. . . .

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal – (A) Appeal filed by person or entity not entitled to file it – (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

Only an affected party, a person or entity with legal standing, may file an appeal of an unfavorable decision. As [REDACTED] is not recognized as an authorized or accredited representative pursuant to 8 C.F.R. § 292.1(a), the appeal has not been filed by the petitioner or by any entity with legal standing in the proceeding. Therefore the appeal has not been properly filed and must be rejected.

Additionally, the appeal is untimely filed. The regulation at 8 C.F.R. § 103.2(a)(1) provides, in pertinent part:

General. Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

As it pertains to the proper filing of an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides:

Filing Appeal. The affected party must submit an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by §103.7 of this part. The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions within 30 days after service of the decision.

If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on May 25, 2011. It is noted that the director properly gave notice to the petitioner that it had 30 days to file the appeal and listed the proper fee for an appeal. The notice further advised: “**The appeal must be filed at the address at the top of this page.**” The notice also advised the petitioner: “**The appeal may not be filed directly with the AAO.**” (Bold emphasis in the original.)

The appeal is dated June 21, 2011. However, despite the clear instructions in the director's notice and on the Form I-290B, the appeal was sent to the AAO. On June 30, 2011, the AAO returned the appeal as improperly filed with the wrong office. The appeal was received *by the director* on August 5, 2011, 41 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and, when filed, be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements when filed shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal did not meet the requirements of a motion to reopen or a motion to reconsider when it was filed. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was not filed by an affected party, was untimely filed, and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.