

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: **OCT 15 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:



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,


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 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 or the attorney or representative of record must submit 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. § 103.8(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). An appeal that is not timely filed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The record indicates that the service center director issued the decision on January 11, 2012. It is noted that the service center director properly gave notice to the petitioner that it had 30 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The petitioner initially submitted the Form I-290B, Notice of Appeal or Motion, without the proper fee. The regulation at 8 C.F.R. § 103.3(a)(2) states an appeal must be accompanied by a fee as set forth in 8 C.F.R. § 103.7. An application or petition that is submitted with the wrong filing fee shall be rejected as improperly filed. 8 C.F.R. § 103.2(a)(7)(i). The Form I-290B with the correct filing fee was received by the service center on March 6, 2012, or 55 days after the decision was issued. 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 director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

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

ORDER: The appeal is rejected.