



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **FEB 05 2013** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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)

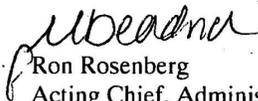
ON BEHALF OF PETITIONER:

[Redacted]

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and subsequent motions to reconsider. 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)(I).

The record reflects a convoluted procedural history. The director denied the petition on January 13, 2012. The petitioner, through prior counsel, filed a motion to reopen and to reconsider on February 14, 2012 with U.S. Citizenship and Immigration Services (USCIS) receipt number [REDACTED].¹ The director denied the motion to reopen on March 9, 2012. On May 23, 2012, the petitioner, through counsel, filed a motion to reopen and to reconsider the decision under USCIS receipt number [REDACTED]. In his May 22, 2012 letter accompanying the motion, counsel referenced three different receipt numbers, including the receipt number for the petitioner's February 14, 2012 motion. Counsel stated:

Please file and process these motions. Please note that I received a number of receipts from previous counsel, and it is unclear which receipt numbers apply to which petitions. I am listing above all petitions that I believe may be involved. Your website indicates that some of the motions or appeals are still pending. If so, please treat the evidence as supplemental evidence for any motions or appeals that are still pending.

Although untimely, the director apparently accepted the filing and denied the motion on June 18, 2012. The record reflects that on July 18, 2012 and August 1, 2012, the petitioner submitted a Form I-290B, Notice of Appeal or Motion. On July 27, 2012 and again on August 14, 2012, the forms were rejected because the petitioner failed to submit the correct fee. The regulation at 8 C.F.R. ^ 103.2(a)(1) provides, Each benefit request or other document must be filed with fee(s) as required by regulation. The regulation at 8 C.F.R. ^ 103.2(a)(7)(iii) states, A benefit request which is rejected will not retain a filing date. The appeal, with the correct fee, was filed on August 28, 2012, or 71 days after the director issued her decision. Accordingly, the appeal was untimely filed.

In an August 24, 2012 letter, counsel asserts:

The original rejection of the [appellate] filing was improper. A proper check in the correct amount was enclosed. Although the notice sent by your office was unclear, it appears that you assumed that the signator [sic] was not authorized to

¹ Different counsel represents the petitioner on appeal and is referred to as counsel in this decision.

sign the check. That was not correct. Because the rejection was improper, this filing should be considered timely.

However, there is nothing in the record to support counsel's assertion. The Form I-797C, Notice of Action, clearly advised the petitioner that the form was returned because the check amount was incorrect or had not been provided. Nothing in the notice advised the petitioner that USCIS questioned the signature on the check. Counsel did not provide a copy of the check with the alleged disputed signature or any other information that would indicate the issue was the signature on the check rather than an incorrect or missing fee. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel further asserts:

When your office rejected the notice, you erroneously sent the notice to the petitioner despite the fact that a notice of appearance on Form G-28, properly executed by the Petitioner was enclosed. Because your office sent the filing to the petitioner, rather than undersigned Counsel, the petitioner sent a check in the incorrect amount.

Nonetheless, even assuming that the appeal was filed with the appropriate fee on August 1, 2012, the appeal would have still been untimely.

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.