



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

Date: **FEB 21 2013**

Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner:  
Beneficiary:

[Redacted]

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition and subsequent motions to reopen and reconsider. The Administrative Appeals Office (AAO) rejected the petitioner's appeal as untimely filed. The matter is now before the AAO on a motion to reopen and to reconsider. The motions will be dismissed.

A motion to reopen must state the new facts to be provided and 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 U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). 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 shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The regulation at 8 C.F.R. § 103.2(a)(1) provides, in pertinent part:

*Preparation and submission.* Every benefit request or other document submitted to DHS [Department of Homeland Security] must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission.

The regulation at 8 C.F.R. § 1.2 defines "form instructions" as "instructions on how to complete and where to file a benefit request, supporting evidence or fees, or any other required or preferred document or instrument with a DHS immigration component."

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 service center director issued the decision on March 7, 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. In its November 15, 2012 dismissal, the AAO rejected the appeal, stating that it had been received by the service center on April 10, 2012, 34 days after the director issued her

decision. To the extent that the AAO's prior decision found that appeal was filed 34 days after the director's decision, this finding was in error.

In her decision, the director erroneously provided the petitioner with an address at the California Service Center, P.O. Box 10360, Laguna Niguel, CA rather than to the USCIS processing center (Phoenix Lockbox) at USCIS 290B, P.O. Box 21100, Phoenix, AZ as contained in the instructions to the Form I-290B, Notice of Appeal or Motion. Counsel, however, submitted the appeal to 24000 Avila Road, FL 2, Room 2312, Laguna Niguel, California. The appeal was received at that address on April 6, 2012 and forwarded to the USCIS processing center in Chicago, IL. That office received the appeal on April 10, 2012, and on April 13, 2012, returned the appeal to counsel for proper filing with the USCIS I-290B processing center (Phoenix Lockbox) on April 13, 2012. The appeal was properly filed with the Phoenix Lockbox on April 19, 2012, or 43 days after the decision was issued. Accordingly, the appeal was untimely filed.

Counsel's assertion that the appeal was timely as she filed the appeal as per the instructions on the director's March 7, 2012 denial is without merit. As previously indicated, although the director did provide an incorrect address for which to file the appeal, counsel did not submit the appeal to that address. Counsel followed neither the instructions in the denial or the regulations on the Form I-290B. Accordingly, faulty instructions from the director are not the basis for the petitioner's late filing of the appeal.

Furthermore, although counsel alleges "numerous errors [by USCIS] in this case that led to the Denial of the instant petition," at issue on motion is not the underlying petition but rather the AAO's prior decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. As new evidence has not been presented to adequately overcome the grounds for the previous dismissal, and no reasons set forth indicating that the decision was based on an incorrect application of law, the previous decision of the AAO and the director will be affirmed. The petition is denied.

**ORDER:** The motions are dismissed. The AAO's decision of November 15, 2012 is affirmed. The petition remains denied.