



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF B-T-F-

DATE: SEPT. 8, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a Hindu temple, seeks to employ the Beneficiary as a nonimmigrant religious worker to perform services as a temple paricharaka (chef). *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). The Director, California Service Center, denied the petition and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motion will be denied.

In order to properly file a motion to reopen or reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a petitioner must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). For a motion to reopen, the regulation grants U.S. Citizenship and Immigration Services (USCIS) the discretion to excuse a reasonable delay that is beyond the control of the petitioner. *See* 8 C.F.R. § 103.5(a)(1)(i). There is no regulation allowing for an untimely motion to reconsider. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this case, the record reflects that our decision dismissing the appeal was issued on January 16, 2015. Our decision indicated that any motion must be filed within 33 days of the date of the decision and stated in bold, "Do not file a motion directly with the AAO." Nonetheless, the Petitioner submitted the motion, without fee, directly to our office on February 26, 2015, forty-one days after the decision was issued. We returned the documentation to the petitioner with instructions as to where to file the motion and informed the petitioner that the filing fee for a Form I-290B, Notice of Appeal or Motion, was \$630. On March 20, 2015, the USCIS Phoenix Lockbox rejected the petitioner's motion as filed without the proper fee. The motion with the appropriate fee was filed with USCIS on March 31, 2015, 74 days after we issued our decision.

Although the regulation at 8 C.F.R. § 103.5(a)(1)(i) allows us to excuse a reasonable delay that is beyond the control of the applicant in the exercise of discretion for motions to reopen, the Petitioner has not addressed the untimely filing in this case. Therefore, the motion will be denied.

Matter of B-T-F-

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is denied.

Cite as *Matter of B-T-F-*, ID# 13869 (AAO Sept. 8, 2015)