



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

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

MATTER OF A-L-C-O-, INC.

DATE: APR. 28, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a church, seeks to classify the Beneficiary as a nonimmigrant religious worker to perform services as an "International Relationship and Personal Assistant to CEO." *See* Immigration and Nationality Act (the Act) § 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers or in other religious occupations or vocations in the United States.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the proffered position qualifies as a religious occupation or how it will compensate the Beneficiary. We dismissed a subsequent appeal. We further concluded that the Petitioner did not sufficiently show that the Beneficiary was a member of the same type of religious denomination as the petitioning organization for at least two years before the petition was filed.

The matter is now before us on a motion to reopen.

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). A motion that does not meet applicable requirements shall be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

In this case, the record reflects that our decision dismissing the appeal was issued on November 18, 2015. Our decision indicated that any motion must be filed within 33 days of the date of the decision and specifically instructed, "Please do not mail any motions directly to the AAO." The Petitioner mailed the motion directly to us, and we received it on December 23, 2015, 35 days after the decision was issued. We returned the submission because it was improperly filed at the wrong address as we do not accept fees at this location. The motion was not properly filed until January 19, 2016, 62 days after the decision was issued. The Petitioner submits a letter from its pastor stating that he called the U.S. Citizenship and Immigration Services (USCIS) National Customer Service

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Center and was told to mail the motion to the AAO. He contends he submitted all documentation on December 17, 2015.

We decline to exercise our discretion to excuse the late filing. Even assuming USCIS told the pastor to file the motion directly with the AAO and he mailed the Form I-290B, Notice of Appeal or Motion, on December 17, 2015, we did not receive it until December 23, 2015, 35 days after the decision was issued. As noted above, 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). The motion will be denied as untimely filed.

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 A-L-C-O-, Inc.*, ID# 17365 (AAO Apr. 28, 2016)