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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

**PUBLIC COPY**

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 23 2011

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition was based on incorrect information, and should not have been approved. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal as untimely filed.

The petitioner is [redacted] It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a catechist. The director determined that the petitioner had not correctly described the position offered to the beneficiary, and that the beneficiary's actual duties do not constitute a qualifying religious occupation.

In order to properly file an appeal of a revocation on notice, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 205.2(d) requires the affected party to file the appeal within 15 days of after service of the notice of revocation. If the decision was mailed, the appeal must be filed within 18 days. *See* 8 C.F.R. § 103.5a(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).

The record indicates that the director issued the decision on March 26, 2009. The director erroneously stated that the petitioner could file an appeal within 33 days, rather than 18 days. The director's error cannot and does not supersede the pertinent regulations. Neither the statute nor the regulations grant us the authority to extend the time for filing appeals. *Matter of Liadov*, 23 I&N Dec. 990, 993 (BIA 2006). The regulation at 8 C.F.R. § 205.2(d) is binding on USCIS employees in their administration of the Act, and USCIS employees do not have the authority to act outside those regulations. *See, e.g., Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120 (C.A.D.C., 1979) (an agency is bound by its own regulations); *Reuters Ltd. v. F.C.C.*, 781 F.2d 946, (C.A.D.C.,1986) (an agency must adhere to its own rules and regulations; ad hoc departures from those rules, even to achieve laudable aims, cannot be sanctioned). An agency is not entitled to deference if it fails to follow its own regulations. *U.S. v. Heffner*, 420 F.2d 809, (C.A. Md. 1969) (government agency must scrupulously observe rules or procedures which it has established and when it fails to do so its action cannot stand and courts will strike it down).

The petitioner filed the Form I-290B Notice of Appeal on April 27, 2009, 32 days after the date on the revocation notice. Therefore, the petitioner did not file a timely appeal, and we must reject the appeal as 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. A motion to reopen must state the new facts to be proved in the reopened proceeding 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 Service policy. 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).

Here, the untimely appeal does not meet the requirements of a motion to reopen or reconsider. The appeal contains no new (*i.e.*, previously unavailable) facts or evidence, as required for a motion to reopen. The petitioner simply repeats a prior claim. Specifically, the petitioner reiterates claims that the USCIS officer who conducted a site inspection in 2007 misinterpreted comments from church employees, leading the officer to conclude that the beneficiary a wedding coordinator rather than a full-time catechist. The untimely appeal contains no new substantive evidence to support this claim. A general allegation of error is not grounds for a motion to reconsider. *See In Re. O-S-G-*, 24 I&N Dec. 56 (BIA 2006). The moving party must specify the factual and legal issues that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. See *Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991). Therefore, the AAO will not instruct the director to treat the untimely appeal as a motion.

**ORDER**: The appeal is rejected.