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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

SEP 0 4 2003

File: WAC-01-161-54356 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: 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:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as untimely filed.

The petitioner is a home for senior citizens. It seeks classification of the beneficiary as a special immigrant worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to employ her as a religious assistant.

Pursuant to 8 C.F.R. § 103.3(a)(2)(i), an affected party has 30 days after service of a decision to file an appeal with the office that made the unfavorable decision. The record reflects that the acting director's decision of February 8, 2002, was sent to the petitioner at its address of record. The appeal was received by the Bureau 35 days later on March 15, 2002. The appeal was untimely filed.

The regulations at 8 C.F.R. § 103.3 (a) (2) (v) (B) (1) state that an appeal which is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.2 (a) (2) (v) (B) (2), however, states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5 (a) (2) or a motion to reconsider as described in 8 C.F.R. § 103.5 (a) (3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

Regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

Regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decision 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.

Regulations at 8 C.F.R. § 103.5(a)(4) state, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

On appeal, the petitioner's representative contends that the beneficiary has worked for the petitioner since 1994 and that regulations do not state that the beneficiary must have been employed in a full-time salaried position to qualify. The

representative does not, however, state any new facts, nor does she state reasons for reconsideration that are supported by any pertinent precedent decisions establishing that this decision was based on an incorrect application of law or Bureau policy. For these reasons, the appeal will not be treated as a motion to reopen or reconsider.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is rejected as untimely filed.