U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: EAC 01 153 52462 Office: VERMONT SERVICE CENTER Date: MAY 14 2004

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

The motion is untimely. Under the provisions of 8 C.F.R. § 103.5(a)(1)(i), a motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen. The regulation at 8 C.F.R. § 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. The AAO issued its decision on June 3, 2003. The petitioner's motion to reopen was rejected by the service center for failure to submit a properly executed check. The motion to reopen, with an acceptable check attached, was received on July 21, 2003. The motion was therefore filed untimely.

The regulation at 8 C.F.R. § 103.5(a) provides that the agency may, in its discretion, accept a motion beyond this time frame if the petitioner demonstrates that the delay was reasonable and beyond his or her control. The petitioner provides no evidence that the delay in filing his motion to reopen was reasonable and beyond his control.

ORDER: The motion is dismissed.