



U.S. Citizenship
and Immigration
Services

B2

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

OCT 19 2004

IN RE:

Petitioner:

Beneficiary:

[Redacted]

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

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.

Mari Johnson

← Robert P. Wiemann, Director
Administrative Appeals Office

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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 petitioner then filed a motion to reopen, which the AAO dismissed. The matter is now before the AAO on a second motion to reopen. The motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i), in pertinent part, provides:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, 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 Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

The record indicates that the AAO issued a decision dismissing the petitioner's first motion as untimely on August 18, 2003. On September 11, 2003, the Citizenship and Immigration Services received a letter and fee from the petitioner stating that the letter constituted a subsequent motion to reopen. However, the motion was not accepted because it had not been properly filed.

On September 16, 2003, the Service Center issued a notice to the petitioner requesting that he provide the "underlying receipt number" for the motion. On September 24, 2004, the petitioner re-submitted his motion, this time identifying the proper receipt number.

The petitioner's second motion was not properly filed until September 24, 2003, or 37 days after the AAO dismissed the initial motion. It has not been demonstrated that the delay in filing was reasonable and was beyond the control of the applicant or petitioner.

8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

As the motion was untimely filed, it must be dismissed.

ORDER: The motion is dismissed.