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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536

File: [REDACTED] IN 99 018 53809 Office: Nebraska Service Center

Date: MAR 11 2003

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

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 employment-based immigrant visa petition was denied by the Director, Nebraska 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 motion is untimely. 8 C.F.R. § 103.5(a)(1)(i), states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. 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. 8 C.F.R. § 103.5a(b). Here, the AAO mailed its decision to the petitioner on November 6, 2001. The petitioner's motion to reopen is dated March 28, 2002 and is postmarked April 2, 2002, nearly 5 months after the AAO's decision. The motion was properly received by the Nebraska Service Center on April 5, 2002.

The petitioner acknowledges that the motion has not been filed within the prescribed 30-day period. He contends that the mail delayed his receipt of the AAO's decision. He believes this may have occurred because he had changed his mailing address. He also states that he needed legal advice in order to proceed. 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion may be excused at the Bureau's discretion where it is shown that the delay was reasonable and was beyond the control of the applicant or petitioner. We note that the AAO's decision was mailed to the petitioner's last known address and that the record contains no evidence that the petitioner notified the Bureau of his change of address prior to the date of the decision. Petitioner's explanation of the filing delay does not demonstrate that it was reasonable or beyond his control.¹

ORDER: The motion is dismissed.

¹ We note that subsequent to the filing of the instant petition, another employment based immigrant visa petition with receipt number LIN 0217652584 was approved on October 23, 2002, naming this petitioner as the beneficiary.