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File: [Redacted]
EAC 01-228 51527

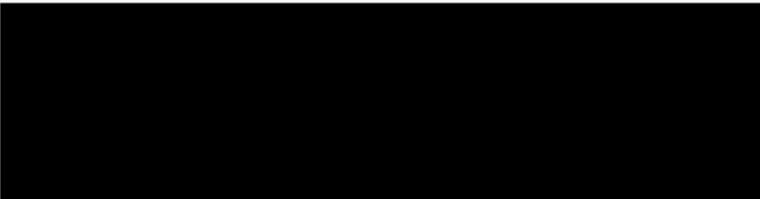
Office: VERMONT SERVICE CENTER

Date: SEP 29 2006

In re: [Redacted]
Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

IN BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the Administrative Appeals Office (AAO) denied a subsequent appeal. The matter is now before the AAO on a Motion to Reopen or Reconsider. The motion will be rejected as untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that any motion to reconsider an action by Citizenship and Immigration Services (CIS) must be filed within 30 days of the decision that the motion seeks to reconsider.¹ The regulation further provides that any motion to reopen a proceeding before CIS 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 CIS where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner. Three days are added to the permissible period when the notice of the decision is by mail. 8 C.F.R. § 103.5a(b).

The record indicates that the AAO issued the decision on August 12, 2003. It is noted that the AAO properly gave notice to the petitioner that it had 33 days to file a motion to reconsider or a motion to reopen with the office that originally decided the case.² Although the beneficiary dated the motion September 10, 2003, it was received by the Vermont Service Center on October 15, 2003, or 64 days after the decision was issued.³ The petitioner has not demonstrated that the delay was reasonable and was beyond its control. Accordingly, the motion was untimely filed.

As the motion was untimely filed, the motion must be rejected.

ORDER: The motion is rejected.

¹ The motion must be submitted to the office maintaining the record upon which the unfavorable decision was made. 8 C.F.R. § 103.5(a)(1)(iii)(E).

² The office that originally decided the case is the Vermont Service Center.

³ The record of proceeding appears to show that the motion was filed with the AAO after September 10, 2003 and transferred to the Vermont Service Center.