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

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FILE: WAC 01 056 51955 Office: CALIFORNIA SERVICE CENTER

Date: JAN 29 2007

IN RE: Petitioner:
Beneficiary:



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)

ON 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 preference visa petition was denied by the Director, California Service Center. The petitioner submitted an appeal that was subsequently dismissed by the Administrative Appeals Office (AAO) based on the record as presently constituted. Former counsel¹ then submitted a motion to reconsider. The AAO reopened the matter and affirmed the decision of the direction and the first AAO decision. New counsel now submits a new motion to reconsider. The motion will be rejected as it is untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision.

The regulation at 8 C.F.R. § 1.1(h) states:

The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

The record indicates that the AAO issued a decision on February 25, 2003. It is noted that the AAO properly gave notice to the petitioner that it had 30 days to file the appeal. Although current counsel dated the motion March 27, 2003, it was received by CIS on April 23, 2003, or 57 days after the decision was issued. Accordingly, the motion was untimely filed.

It is noted that the official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to consider the motion and forwarded the matter to the AAO.

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

ORDER: The motion is rejected.

¹ Mr. [REDACTED]