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BC

MAR 15 2007

FILE: [Redacted]
EAC-03-123-50339

Office: VERMONT SERVICE CENTER

Date:

IN RE: 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)

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 Director, Vermont Service Center denied the preference visa petition. The petitioner then appealed the denial to the Administrative Appeals Office (“AAO”). The AAO affirmed the director’s decision. The petitioner has now filed a Motion to Reconsider the AAO decision. The Motion to Reconsider will be rejected as untimely filed.

The petitioner is garage and seeks to employ the beneficiary permanently in the United States as an auto mechanic. As required by statute, the petition was filed with Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor (DOL). As set forth in the June 3, 2005 denial, the AAO affirmed the director’s decision and dismissed the appeal on the basis that the petitioner had not established its ability to pay the beneficiary the proffered wage from the priority date continuing until the beneficiary obtains lawful permanent residence.

In order to properly file a motion to reopen or reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion 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 Citizenship & Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The record indicates that the director issued the decision on June 3, 2005.

Although counsel dated the Motion to Reconsider July 28, 2005, it was received and stamped by CIS on August 9, 2005, or 67 days after the decision was issued.¹ Accordingly, the motion was untimely filed. Counsel did not provide any evidence to show that the delay was reasonable or beyond the control of the petitioner.

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

ORDER: The motion is rejected.

¹ Counsel initially submitted the Motion to Reconsider on July 29, 2005, which the director returned to counsel as the Motion was improperly filed without the requisite filing fee. *See* 8 C.F.R. § 103.2(a)(7)(i). Counsel then re-filed the Motion to Reconsider, which was accepted on August 9, 2005. We note that the initial attempt at filing was similarly untimely.