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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 05 051 52931 Office: CALIFORNIA SERVICE CENTER Date: **SEP 29 2008**

IN RE: Petitioner:  
Beneficiary:



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

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.

A handwritten signature in black ink, appearing to read "L. Br" with a small "for" written below it.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center. The appeal was subsequently dismissed by the Administrative Appeals Office (AAO). The petitioner has filed a motion to reconsider. It will be rejected as untimely filed pursuant to 8 C.F.R. § 103.5(a)(1)(ii).

The record indicates that the director denied the petition on August 16, 2005. The AAO dismissed the appeal on February 13, 2007. The petitioner subsequently filed a motion to reconsider directly with the AAO, which the AAO received on March 14, 2007. The cover letter indicates that the motion was submitted with a check for \$110. The regulation at 8 C.F.R. 103.5(a)(1)(iii)(E) provides that a motion to reopen or reconsider should be submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction. In this matter, that office is the California Service Center. Pursuant to 8 C.F.R. § 103.7(a)(2)(b)(2007), the amount of the fee for a motion to reopen or reconsider in March 2007 was \$385. This fee was effective as of September 28, 2005, more than one year and five months before the motion was filed. 70 Fed. Reg. 50954-01 (Aug. 29, 2005). Thus, the AAO forwarded the motion to the California Service Center, which rejected the motion for failure to submit the required fee.

The petitioner subsequently refiled the motion to reconsider with the correct fee at the California Service Center, which received it on April 13, 2007.

The regulation at 8 C.F.R. § 103.2(a)(7)(i) requires Citizenship and Immigration Services (CIS) to reject any petition or application filed with the incorrect filing fee. Likewise, filings that are rejected because they are submitted with incorrect filing fees do not retain filing dates. *Id.* Therefore, in this matter, the motion was properly filed on April 13, 2007.

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

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.

In accordance with 8 C.F.R. § 103.5a(b), a motion must be submitted within 33 days if the decision was served by mail. Service records reveal that the AAO's notice was mailed to the petitioner at its address of record and to counsel at his address of record. The petitioner has not demonstrated that it or counsel advised the AAO of any change of address. The petitioner was on notice from the regulations and the above cited Federal Register notice that the petition should be filed with the Service Center and that the current fee was \$385. As such, the petitioner has not demonstrated that the failure to file a timely motion was beyond its control or due to CIS error.

The appeal was dismissed on February 13, 2007. The deadline for submitting a properly filed motion to reconsider was March 19, 2007 (33 days). CIS has no authority to accept an untimely motion to reconsider. Even if we were to consider the filing a motion to reopen, the petitioner has not demonstrated that the delay was reasonable and beyond his control.

**ORDER:** The motion to reconsider is rejected as untimely filed.