

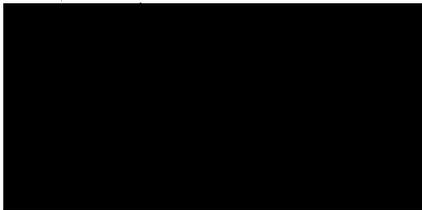


U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUN 10 2005

WAC 00 181 50947

IN RE:

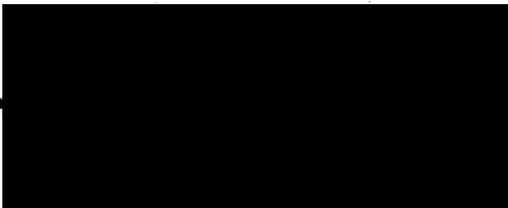
Petitioner:



PETITION:

Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

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.

Maig Johnson

2 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The motion is untimely. The regulation at 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. The regulation at 8 C.F.R. § 103.5a(b) states that 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. Here, the AAO mailed its decision to the petitioner on August 27, 2001. The petitioner dated his motion November 7, 2001, more than two months after the AAO's decision. The decision was properly received by the Service Center on November 21, 2001.

Counsel asserts that the motion is a motion to reopen. According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. Counsel does not state any new facts and the motion is not supported by affidavits or other documentary evidence. Thus, the motion is not a proper motion to reopen. According to the regulation at 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. The instant motion asserts that the AAO's previous decision incorrectly applied the law. Thus, it is closer to a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion *to reopen* may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. The regulation does not provide similar discretion for motions to reconsider. As the instant motion constitutes, at best, a motion to reconsider, we cannot consider whether the delay was reasonable and beyond the control of the petitioner. Regardless, counsel makes no attempt to explain why the motion was filed untimely.

In light of the above, the motion is untimely filed.

ORDER: The motion is dismissed.