

C1

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: [Redacted]  
LIN 01 186 50364

Office: NEBRASKA SERVICE CENTER

Date: DEC 10 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[Redacted]

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.

*Maui Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

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. 8 C.F.R. § 103.5(a)(1)(i). Because the AAO served its decision by mail, three days are added to the petitioner's response period pursuant to 8 C.F.R. § 103.5a(b). Pursuant to 8 C.F.R. § 103.2(a)(7), the filing date is established upon the date that Citizenship and Immigration Services (CIS) actually receives the submission. Thus, in order to be timely, the petitioner's motion had to arrive at CIS no later than 33 days after the date of the AAO's decision.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The above regulations provide limited conditions for the acceptance of an untimely motion to reopen, but not an untimely motion to reconsider. Pursuant to the above regulations, a motion that consists entirely of arguments and references to prior submissions is a motion to reconsider. The petitioner's motion in this proceeding contains no new evidence and therefore does not constitute a motion to reopen.

We note that the motion includes a "motion for extension to file documents." The regulations do not provide for such a motion, nor do they permit a petitioner to submit additional documentation to supplement a previously filed motion. We must, therefore, limit consideration to the motion as filed. A motion that contains no new documentary evidence at the time of filing is not a motion to reopen, and the assertion that unidentified new evidence will be submitted at some unspecified future time does not qualify a motion as a motion to reopen.

The AAO issued its decision on July 31, 2003. The petitioner's motion is postmarked September 3, 2003, which was 33 days later, and thus the last day for timely filing. CIS received the motion on September 4, 2003, 34 days after the date of the AAO's decision.

The petitioner's motion to reconsider was not timely filed, and there is no regulatory provision to permit its acceptance. Therefore, the motion must be dismissed.

**ORDER:** The motion is dismissed.