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



FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **SEP 07 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:



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.

Mari Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The director subsequently reopened the matter on the petitioner's motion, and again denied the petition. The petitioner then appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed that appeal, and the petitioner has now filed a motion to reconsider. The motion will be rejected as untimely.

The regulations define the difference between a motion to reopen and a motion to reconsider. 8 C.F.R. § 103.5(a)(2) states that 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)(3) states that 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.

The petitioner refers to the present motion as a "motion to reopen/reconsider," but the motion contains no new evidence. It consists entirely of arguments and references to previously-submitted materials. Therefore, it meets the regulatory definition of a motion to reconsider, but not that of a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that 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. If the decision was mailed, 8 C.F.R. § 103.5a(b) permits an additional three (3) days to account for mailing time. Thus, while the 33-day period for filing a motion to *reopen* is somewhat flexible, to allow the petitioner to obtain evidence, the filing period for a motion to *reconsider* has no such provision to permit late filing.

The AAO issued its dismissal notice on December 23, 2003. The letter that constitutes the petitioner's motion to reconsider is dated 35 days later, January 27, 2004. Thus, by the time the motion was drafted, the 33-day period for filing by mail had already elapsed. The petitioner mailed the motion on January 28, and the director received the motion the next day, January 29, 2004, 37 days after the date of the AAO's decision.

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

ORDER: The motion is dismissed.