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U.S. Citizenship  
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*CJ*

FEB 17 2005

FILE: [REDACTED]  
EAC 01 177 53577

Office: VERMONT SERVICE CENTER

Date:

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 PEMA TSAL MEDITATION CENTER:



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*

*R* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed as untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states 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 subject to the motion was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record indicates that the AAO issued the decision on September 12, 2003. The director properly gave notice to the petitioner that it had 33 days to file the appeal. The motion is dated October 17, 2003, 35 days after the decision was issued. The director received the motion three days later, October 20, 2003, 38 days after the issuance of the appellate decision. Accordingly, the motion was untimely filed. Counsel does not explain or even acknowledge the untimely nature of the motion. Accordingly, there has been no showing, nor any attempt to show, that the delay was beyond the control of the petitioner. Therefore, the motion must be dismissed.

We note that the petitioning entity, [REDACTED] ceased to exist in 2001. Another Buddhist temple has assumed the petition, but it is not clear that the new temple is the legal successor in interest of the old temple. If not, then the new temple lacks authority to continue to pursue the old temple's petition. In any event, this issue is moot, given the dismissal of the motion.

**ORDER:** The motion is dismissed.