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

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FILE:

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LIN 02 265 52593

Office: NEBRASKA SERVICE CENTER

Date:

DEC 08 2008

IN RE:

Petitioner:

Beneficiary:

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter for further consideration and action. The director again denied the petition and certified the decision to the AAO for review. The AAO affirmed the director's decision. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will dismiss the motion.

Any motion to reconsider must be filed within 30 days of the decision for which reconsideration is sought. 8 C.F.R. § 103.3(a)(1)(i). 8 C.F.R. § 103.5a(b) allows an additional three days to account for service of the decision by mail.

Here, the AAO issued its decision on November 15, 2005. To be timely, a motion to reconsider that decision should have been filed no later than December 18, 2005. A motion was improperly filed on December 15, 2005, but USCIS records indicate that this filing was rejected for "incorrect or no fee." The motion was later resubmitted on January 9, 2006, well after the filing deadline for a motion to reconsider.

While the regulations do not make any provision for late filing of a motion to reconsider, 8 C.F.R. § 103.3(a)(1)(i) permits late filing of a motion to reopen provided the delay is reasonable and beyond the control of the petitioner. Submission of an incorrect filing fee, when correct fee information is readily available to the public, is neither reasonable nor beyond the control of the petitioner.

Based on the above discussion, the motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.