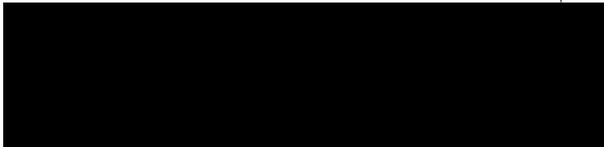


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U.S. Citizenship  
and Immigration  
Services

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FILE:

[Redacted]  
LIN 01 120 50379

Office: NEBRASKA SERVICE CENTER

Date:

AUG 04 2005

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**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 reopen and/or reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

The regulation at 8 C.F.R. § 103.2(a)(1) provides:

*General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. *The form must be filed with the appropriate filing fee required by § 103.7.*

Further, the regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

Any motion to reconsider an action by [Citizenship and Immigration Services (CIS)] filed by an applicant or petitioner must be filed within 30 days of the decision the motion seeks to reconsider. Any motion to reopen a proceeding before [CIS] 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 the period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and way beyond the control of the applicant or petitioner.

The record reflects that the AAO issued its decision dismissing the petitioner's appeal on September 30, 2003. According to the evidence in the record, the petitioner submitted a motion to reopen and/or reconsider the AAO's decision to the Nebraska Service Center without the proper fee. Accordingly, the motion was rejected on November 4, 2003.

The petitioner resubmitted the motion with the proper fee, which was received by the director on July 14, 2004. As cited in the regulation above, in order to properly file a motion, the affected party must file the motion within 30 days after service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

In this instance, the motion was received by CIS more than 30 days after the AAO's decision was issued. Accordingly, the motion was not timely filed.

**ORDER:** The motion is dismissed. The previous decision of the AAO will be affirmed and the petition will be denied.