

Identifying data deleted to  
prevent identity information  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

C

MAR 20 2015



FILE: [REDACTED]  
EAC 01 132 50872

Office: VERMONT SERVICE CENTER

Date:

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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, and 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.

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). If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). A motion must be submitted to the office maintaining the record upon which the unfavorable decision was made. 8 C.F.R. § 103.5(a)(1)(iii)(E).

The AAO dismissed the petitioner's appeal on November 18, 2003. The cover page of the decision notified the petitioner that "[a]ny motion must be filed with the office that originally decided your case," and that the record of proceeding had been "returned to the office that originally decided your case," i.e., the Vermont Service Center. An envelope in the record, postmarked December 19, 2003, is addressed from counsel not to the Vermont Service Center, the office that rendered the original decision, but rather to the AAO. The date the submission arrived at the AAO is not recorded. The Vermont Service Center did not receive the motion until December 27, 2003, 39 days after the issuance of the dismissal notice. Therefore, the motion was filed untimely. Delay arising from improper filing is not beyond the control of the petitioner.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Because the petitioner's motion does not meet the requirement of being timely filed with the correct office, it must be and hereby is dismissed.

**ORDER:** The motion is dismissed.