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**U.S. Citizenship
and Immigration
Services**

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CI



FILE: [Redacted]
EAC 01 230 56983

Office: VERMONT SERVICE CENTER

Date: OCT 05 2005

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.

Maif Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to 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.*

[Emphasis added.]

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 February 18, 2005. The beneficiary submitted his original request for an "Emergency Motion to Reconsider" on April 13, 2005, 54 days after the issuance of the AAO's decision. The motion, however, was not rejected as being untimely filed but rather for failure to submit the appropriate appeal fee.¹ On May 2, 2005, 73 days after the AAO's decision was issued, the beneficiary resubmitted the motion with the proper fee. However, regardless of which date is used to determine the filing date, the motion cannot be considered as timely filed.

It is further noted that the motion was not filed by an affected party in the proceeding but rather by the beneficiary of the visa petition. The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to Citizenship and Immigration Services [CIS]) means the person or entity with legal standing in a proceeding. *It does not include the beneficiary of a visa petition.*

[Emphasis added.]

¹ The notice dated April 22, 2005, states, "The application or petition cannot be accepted because the proper fee of \$110.00 U.S. is not attached. Since the case is not properly filed, a priority or processing date cannot be assigned."

Accordingly, if the motion was not being dismissed as untimely filed, it would be dismissed for lack of standing.

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