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FILE: EAC 98 036 52697 Office: VERMONT SERVICE CENTER Date: **MAR 15 2004**

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 service center director denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) dismissed the petitioner's appeal of the director's decision. The AAO granted two subsequent motions, but affirmed the orders upon which they were based. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a pre-school day care and teaching center. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b), so that it may employ her as a group teacher.

In a decision dated April 9, 1998, the director denied the petition on the basis that the evidence had not established that the beneficiary was qualified to serve in a specialty occupation. On September 25, 1998, the AAO dismissed the petitioner's appeal.

On March 4, 1999, the AAO affirmed the order that dismissed the appeal, after considering the merits of a motion on the dismissal. In affirming the dismissal, the AAO stated that the petitioner failed to establish that the proffered position was a specialty occupation. The instant motion is directed at the AAO's October 1, 2002 decision, which affirmed the previous orders, after consideration of a motion directed at the March 4, 1999 decision.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before Citizenship and Immigration Services (CIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day period. 8 C.F.R. 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements because it was not timely filed. The AAO mailed its decision to the petitioner on October 1, 2002. CIS received the petitioner's motion 55 days later on November 22, 2002.

On the Form I-290B filed as part of the motion, the petitioner's director requested "favorable discretion for the slight delay in filing this appeal," stating that she had just taken over the director's position "and did not grasp right away the urgency of filing this appeal." The AAO has determined that this explanation for the late filing does not demonstrate proper cause for consideration of a motion notwithstanding late filing, in accordance with 8 C.F.R. § 103.5(a)(1)(i). Accordingly, the motion will be dismissed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is dismissed.