



U.S. Citizenship  
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FILE: EAC 98 063 51400 Office: VERMONT SERVICE CENTER Date: JUL 20 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:



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.

*Mari Johnson*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Associate Commissioner for Examinations dismissed a subsequent appeal and motion to reconsider. The petitioner submitted a second motion to reconsider, which the Associate Commissioner granted. The Associate Commissioner affirmed the previous decisions of the director and the Associate Commissioner. The matter is again before the Administrative Appeals Office (AAO) on motion to reconsider. The motion will be rejected as untimely filed.

The petitioner is a sign manufacturer that seeks to employ the beneficiary as a graphic designer. 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). The director denied the petition on the basis that the beneficiary was not qualified to perform a specialty occupation.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the complete 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).

The record indicates that the AAO issued its decision on July 27, 1999. It is noted that the AAO properly gave notice to the petitioner that it had 30 days to file the appeal. The motion was received by the director on August 31, 1999, or 35 days after the decision was issued. Accordingly, the motion was untimely filed.

As the motion was untimely filed, it must be rejected.

**ORDER:** The motion is rejected.