



U.S. Citizenship  
and Immigration  
Services

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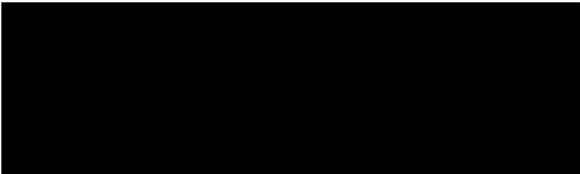
FILE: EAC 05 020 52657 Office: VERMONT SERVICE CENTER Date: MAR 13 2007

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider its previous decision. The motion is dismissed.

A motion to reopen and reconsider must be filed within 30 days after service of the unfavorable decision upon the affected party. The regulation at 8 C.F.R. § 103.5(a)(1)(i) states: .

[A]ny motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. 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.

If, as here, 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 December 22, 2005. The motion is dated March 23, 2006 and was received by Citizenship and Immigration Services on March 24, 2006, or 92 days after the decision was issued. Accordingly, the motion was untimely filed.

The information presented on motion does not present a basis for exercise of the AAO's discretion, under 8 C.F.R. § 103.5(a)(1)(i) above, to excuse late filing of a motion "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner."

The regulation at 8 C.F.R. § 103.5(a)(4) states: "A motion that does not meet applicable requirements shall be dismissed."

As the motion was untimely filed, it is dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion is dismissed.