U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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JAN 11 2005

FILE: EAC 01 118 52583 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

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 Director, Vermont Service Center denied the employment-based visa petition and a subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be rejected as untimely filed.

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 motion within 30 days of 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 failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The last decision of the AAO was issued on November 21, 2003. The motion to reconsider is dated December 23, 2003, 32 days after the AAO decision was issued. The motion was filed on January 12, 2004, more than 52 after the AAO decision was issued.

On motion, the petitioner has not requested that the failure to file the motion within the 30-day time period be excused. Neither counsel nor the petitioner assert that the delay in filing the motion was reasonable and beyond the control of the applicant.

As a matter of discretion, the petitioner's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the applicant. Accordingly, the motion will be rejected as untimely filed.

ORDER: The motion is rejected as untimely filed.