U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 01 228 54737 Office: NEBRASKA SERVICE CENTER Date: [redacted]

JUN 08 2014

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO subsequently affirmed the dismissal of the appeal in response to the petitioner's motion to reopen. The matter is now before the AAO on a second motion to reopen. The motion will be rejected as untimely filed.

The petitioner is a school. It sought to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3) so that it may employ the beneficiary permanently in the United States as a Montessori teacher. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

On October 1, 2001, the director determined beneficiary did not possess the required baccalaureate degree in education as required by the terms of the approved labor certification. The director concluded that the petitioner had failed to establish that the beneficiary was eligible for the visa classification sought as of the visa priority date of January 17, 2001.

The AAO dismissed the petitioner's appeal on May 29, 2002. The petitioner filed a motion to reopen on June 19, 2002. The AAO reviewed the petitioner's arguments and evidence submitted on motion and reaffirmed the denial of the petition on January 31, 2003. The petitioner, through counsel, has filed a second motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides in pertinent part:

> 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 this period expires, may be excused in the discretion of [Citizenship and Immigration Services (CIS)] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

The petitioner's motion was due on March 5, 2003, but was not received by CIS until March 6, 2003. Counsel's affidavit submitted with the motion, states that upon receipt of the AAO's decision in response to the petitioner's first motion to reopen, "we immediately sought an expert opinion to evaluate [the petitioner's] credentials," but were unable to file the motion within the 30-day period "due to impossibility."

Although the AAO recognizes that the petitioner's motion to reopen was only one day past the filing deadline, the point must also be emphasized that the petitioner has been on notice since at least May 29, 2002, the date of the appeal's dismissal, to discover and develop new facts supported by affidavits and other documentary evidence, pursuant to 8 C.F.R. § 103.5(a)(2), governing motions to reopen. Particularly in view of a petitioner's second attempt to reopen the proceedings, the AAO will not exercise its discretion to excuse any delay in complying with a filing deadline in order to allow counsel to gather more documentation.

Accordingly, the petitioner's second motion to reopen is rejected as untimely filed.

ORDER: The motion to reopen is rejected.