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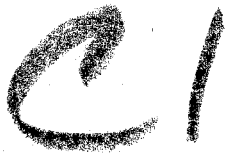
U.S. Citizenship and Immigration Services



[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 12 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider or reopen. The motion will be dismissed.

The motion is untimely. Under the provisions of 8 C.F.R. § 103.5(a)(1)(i), a motion to reopen or reconsider must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The regulation at 8 C.F.R. § 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. The AAO issued its decision on November 19, 2003. The petitioner's motion to reopen or reconsider was received by the service center on December 27, 2003, 38 days after the AAO issued its decision. The motion was therefore filed untimely.

The regulation at 8 C.F.R. § 103.5(a) provides that the agency may, in its discretion, accept a motion to reopen beyond this time frame if the petitioner demonstrates that the delay was reasonable and beyond his or her control. The petitioner provides no evidence that the delay in filing his motion to reopen was reasonable and beyond his control.

ORDER: The motion is dismissed.