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: EAC 01 153 52692 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

AUG 04 2004

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.[1] 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 December 4, 2002. The motion was filed on February 5, 2003, more than 63 after the AAO decision was issued.

In a letter dated January 30, 2003 and received by the Vermont Service Center February 5, 2003, counsel for the petitioner indicated that his office had not received a copy of the original denial notice; but that the corporate client had sent a copy of the denial decision via facsimile. Counsel indicated this was the reason for the late-filed motion.

The statement by counsel does not provide a reasonable basis to excuse the delay in filing the motion. 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.

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[1] The AAO acknowledges that counsel for the petitioner seeks to reopen the director's August 7, 2001 decision. However, the official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this matter the AAO. *See* 8 C.F.R. § 103.5(a)(1)(ii).