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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]

DEC 1 3 2004

File: LIN 01 061 50854 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

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)

IN 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, Nebraska Service Center, denied the nonimmigrant visa petition and a subsequent appeal was 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.

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 appeal 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 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 October 17, 2002. The motion was filed on January 27, 2003, more than three months 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. The petitioner does not assert that the delay in filing the motion was reasonable, and beyond the control of the applicant.

As a matter of discretion, the applicant'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.

The AAO further notes that the record does not contain a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, reflecting that the attorney filing the motion is a representative for the affected party in this proceeding pursuant to 8 C.F.R. § 103.3(a)(1)(iii)(B). Accordingly, the motion shall be rejected as improperly filed. *See* 8 C.F.R. §§ 103.3(a)(2)(v)(A)(*2*) and 8 C.F.R. § 103.5(a)(1)(iii).

For the foregoing reasons, the motion will be rejected.

ORDER: The motion is rejected.