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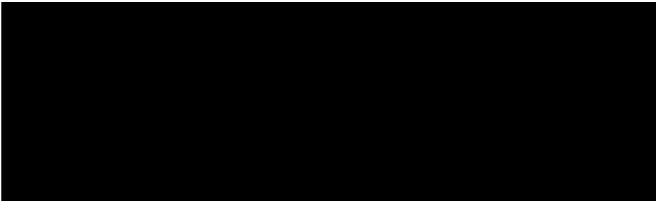
Office: VERMONT SERVICE CENTER

Date: **SEP 27 2005**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:



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.

*Maig Johnson*

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 motion to reopen as untimely filed. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3).

The petitioner's motion to reopen was mailed to the AAO on December 19, 2003 (although the record does not reflect the date that it was received). Another copy of the motion was received by the Vermont Service Center on December 27, 2003. In its decision, the AAO noted that the petitioner's motion to reopen was received by the service center 39 days after the AAO issued its decision, and therefore was not filed within the 30 days required by the regulation. 8 C.F.R. § 103.5(a)(1)(i).

The AAO also noted that 8 C.F.R. § 103.5(a)(1)(iii)(E) requires that motions must be submitted to the office maintaining the record upon which the unfavorable decision was made, and that, in its dismissal of the petitioner's appeal on November 18, 2003, the AAO informed the petitioner that the record had been returned to the office that originally decided the case.

On motion, counsel contends:

[T]he AAO was, in fact, "the office maintaining the record upon which the unfavorable decision was made" (that is, the office which denied an appeal, not the office that denied of [sic] the decision on the I-360). Therefore, it can be construed without guile that the Motion to Reconsider [sic] was sent to the correct office "that maintained the record upon which the unfavorable decision (the denied appeal) was made." Even then, the "untimeliness" was de minimis (9 days).

Counsel's argument, however, fails to take in consideration the fact that the petitioner was specifically informed that the record had been returned to the office that originally decided the case (the Vermont Service Center). Counsel's argument is without merit.

As the petitioner failed to cite any precedent decisions in support of a motion to reconsider and does not argue that the previous decisions were based on an incorrect application of law or CIS policy, the petitioner's motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.