



U.S. Citizenship
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Services

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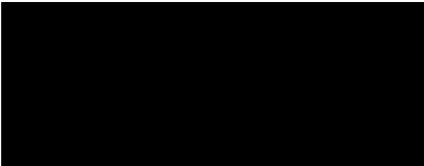
FILE: EAC 01 217 51967 Office: VERMONT SERVICE CENTER Date: JUN 06 2006

IN RE: Petitioner:
Beneficiary:



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

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director of the Texas Service Center denied the nonimmigrant visa petition. The director's decision was then appealed to the Administrative Appeals Office (AAO). That appeal was dismissed by the AAO. The petitioner then filed a motion to reopen pursuant to 8 C.F.R. § 103.5. The motion to reopen was dismissed by the AAO. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The previous decisions of the AAO will be affirmed.

The petitioner is an auto-body repair business that seeks to employ the beneficiary as an application software engineer. The director denied the petition on the basis that the offered position did not qualify as a specialty occupation. The AAO thereafter dismissed the petitioner's appeal on the same ground. The AAO also dismissed the petitioner's subsequent motion to reconsider.

In order to properly file a motion to reconsider, 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 the decision that the motion seeks to reconsider.

The record indicates that the AAO issued the decision denying the motion to reopen on July 12, 2004. The motion to reconsider was received by CIS on August 24, 2004, or 43 days after the decision was issued. Accordingly, the motion was untimely filed.

As the motion was untimely filed, the motion must be dismissed.

ORDER: The motion is dismissed. The petition is denied.