

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B<sub>2</sub>



FILE:

LIN 04 225 50217

Office: NEBRASKA SERVICE CENTER

Date: FEB 02 2009

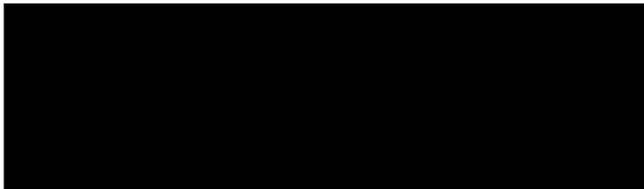
IN RE:

Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO reopened the matter on the petitioner's motion, and affirmed its appellate decision. The matter is now before the AAO on a subsequent motion. The motion will be dismissed as untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The regulation at 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the AAO issued its decision affirming denial of the petition on October 25, 2007. The petitioner's motion was not received until November 28, 2007, 34 days after the AAO's decision was issued. Accordingly, the motion was untimely filed. The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion may be excused in the discretion of U.S. Citizenship and Immigration Services (USCIS) where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. In this instance, the petitioner has not presented any argument or evidence to establish that the delay was either reasonable or beyond his control.

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

**ORDER:** The motion is dismissed.