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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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File: [Redacted]
EAC 03 027 55268

Office: VERMONT SERVICE CENTER

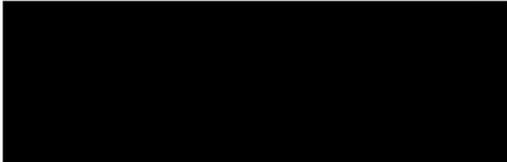
Date: NOV 22 2006

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN 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.

5 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(i) provides, in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). Service records reveal that the AAO's notice was mailed to the petitioner at his address of record and to prior counsel at his address of record. The petitioner has not demonstrated that he or counsel advised the AAO of any change of address. The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E), relating to the filing requirements for motions, provides that a motion must be "[s]ubmitted to the office *maintaining the record* upon which the unfavorable decisions was made for forwarding to the official having jurisdiction." (Emphasis added.)

The AAO dismissed the petitioner's appeal on June 22, 2005. The instructions on the cover page of the decision stated that "[a]ll documents *have been returned to the office that originally decided your case*. Any further inquiry must be made to that office." (Emphasis added.) On July 26, 2005, counsel¹ submitted the motion to the AAO. The AAO returned the motion on that date, advising that the motion should be submitted to the Vermont Service Center. Counsel nevertheless resubmitted the motion to the AAO on August 8, 2005. The AAO returned the motion to counsel on that date, advising once again that the petitioner should file the motion with the Vermont Service Center. On September 23, 2005, counsel properly filed the motion with the Vermont Service Center.

In light of the above, the motion is untimely. Moreover, given the language on the cover page of the initial decision by the AAO and in the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E), the petitioner has not demonstrated that his failure to file a timely motion was beyond his control or due to Citizenship and Immigration Services (CIS) error.

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

ORDER: The motion is dismissed.

¹ The record contains a Form G-28 Notice of Entry of Appearance as Attorney or Representative for a different attorney that is dated after the Form G-28 filed by counsel. The newer G-28, however, specifies in two places that the attorney listed on that notice only represents the petitioner for his Form I-485, Application to Register Permanent Residence or Adjust Status.