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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:

EAC 05 061 53617

Office: VERMONT SERVICE CENTER

Date: **APR 23 2008**

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

**2** Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer is in the national interest of the United States. The director found that the petitioner had established eligibility for the classification sought, but not that an exemption from the requirement of a job offer would be in the national interest of the United States. The AAO affirmed the denial.

Any motion to reconsider filed by the petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. *See* 8 C.F.R. § 103.5(a)(1)(i). 8 C.F.R. §§ 103.2(a)(1) and 103.5(a)(1)(iii)(B) require that a motion must be accompanied by a nonrefundable fee specified in 8 C.F.R. § 103.7. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The AAO dismissed the petitioner's appeal on April 26, 2007. Any motion to reconsider that decision had to be filed no later than 33 days after that decision, pursuant to 8 C.F.R. §§ 103.5(a)(1)(i) and 103.5a(b) (which allows an additional three days if the decision is served by mail, as was the case here). Therefore, the petitioner had until May 29, 2007 to file a motion to reconsider.

On May 21, 2007, the director received a document which the petitioner called "a motion to reconsider." This submission, however, did not include the required fee. Therefore, the petitioner's submission of this document did not constitute the filing of a motion. Because no fee was submitted, we cannot consider May 21, 2007 to be the receipt date of a duly filed motion. *Cf.* 8 C.F.R. § 103.2(a)(7)(i) (an application or petition shall be regarded as properly filed if the required filing fee is attached). The director received a new motion to reconsider, including the required fee, on June 28, 2007, 63 days after the issuance of the appellate decision that the motion sought to address.

While 8 C.F.R. § 103.5(a)(1)(i) permits the untimely filing of a motion to reopen under certain circumstances where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner, there is no comparable provision for the untimely filing of a motion to reconsider. By definition, a motion to reconsider, unlike a motion to reopen, rests solely on arguments and established precedent, rather than on new evidence that a petitioner may be unable to obtain within the prescribed period. *See* 8 C.F.R. §§ 103.5(a)(2) and (3).

Because the petitioner did not file the motion with the required fee during the allotted filing period, the motion does not meet applicable requirements and must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4). This requirement is binding on the AAO, which has no discretion to waive it. This decision is without prejudice to adjustment or other proceedings arising from the August 29, 2007 approval of another immigrant petition on the alien's behalf (receipt number SRC 07 129 53782).

**ORDER:** The motion is dismissed.