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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 00 099 50047

Office: VERMONT SERVICE CENTER

Date: MAR 12 2009

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the employment-based immigrant visa petition. Subsequently, the director determined that disqualifying circumstances had arisen. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO then reopened the petition on the petitioner's motion, and affirmed the denial of the petition. The matter is now before the AAO on a second motion to reopen. The motion will be dismissed as untimely.

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. 8 C.F.R. § 103.5(a)(1)(i). 8 C.F.R. § 103.5a(b) allows an additional three days for service by mail.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The AAO issued its prior decision on October 9, 2007. The instructions to Form I-290B, Notice of Appeal or Motion, advise: "Do **not** send your appeal directly to the Administrative Appeals Office" (emphasis in original). The petitioner nevertheless sent the Form I-290B directly to the AAO, which received the motion on November 9, 2007. The AAO returned the improperly filed motion. The Vermont Service Center received the motion on November 20, 2007, 42 days after the AAO issued its decision. Therefore, the decision was untimely filed. The petitioner having been instructed not to file the form directly with the AAO, the delay arising from the petitioner's failure to follow those instructions was neither reasonable nor beyond the petitioner's control.

The motion was not properly filed and therefore, pursuant to 8 C.F.R. § 103.5(a)(4), must be dismissed.

ORDER: The motion is dismissed.