

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B1



FILE: [Redacted]  
EAC 00 194 53193

Office: VERMONT SERVICE CENTER

Date: OCT 01 2007

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the appeal of that denial, affirming the director's decision to deny. The AAO affirmed the director's decision again in response to the petitioner's motion to reopen or reconsider. The matter is now before the AAO on the petitioner's second motion to reopen and reconsider. The motion will be rejected as untimely filed.

In order to properly file a motion to reopen or reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion to reconsider within 30 days of the decision that the motion seeks to reconsider. A motion to reopen must also 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 motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). 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 shows that the director issued his decision on January 23, 2001. The AAO dismissed the appeal on August 21, 2001. In response to the petitioner's motion to reopen and reconsider the AAO's decision of August 21, 2001, on May 3, 2002, the AAO affirmed the denial of the petition. The petitioner filed a subsequent motion to reopen and/or reconsider, which was received by the director on June 7, 2002.<sup>1</sup> The director forwarded the matter to the AAO.

As stated above, if a motion to reopen is untimely, a delay may be excused if it is demonstrated that the delay was reasonable and was beyond the control of the petitioner. In this case there was no such demonstration. In this matter, 33 days following the date of the AAO's decision of May 3, 2002, on the petitioner's first motion to reopen and reconsider was Wednesday, June 5, 2002. The record shows that the director received the second motion on June 7, 2002. The AAO finds that the motion to reopen and/or reconsider was untimely filed and the petitioner has not shown that the delay in filing was reasonable and beyond its control.

**ORDER:** The motion is rejected.

---

<sup>1</sup>A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).