

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

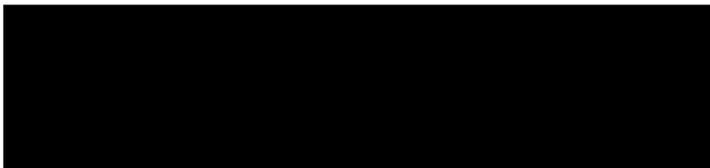
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Ci

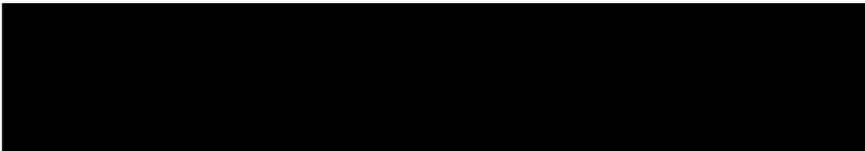


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 02 2007
WAC 03 221 52794 (I-360 petition)
WAC 07 085 50481 (motion)

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for further consideration. The director again denied the petition and certified it to the AAO, which affirmed the director's decision. The beneficiary, through his attorney, has filed a motion to reopen. The motion will be dismissed.

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

A motion must be filed by an affected party. 8 C.F.R. § 103.5(a)(1)(i). For purposes of appeals, certifications, and reopening or reconsideration, *affected party* (in addition to Citizenship and Immigration Services [CIS]) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. 8 C.F.R. § 103.3(a)(1)(iii).

[REDACTED] the attorney who filed the motion begins her brief by stating: "Comes now Petitioner and Beneficiary . . . , through undersigned Counsel." This wording implies that the attorney acts on behalf of both the petitioner and the beneficiary. The record, however, contains no Form G-28 Notice of Entry of Appearance as Attorney or Representative signed by any official of the petitioning entity regarding this attorney. There is a Form G-28 from the beneficiary to that effect, but the beneficiary is not an affected party. Absent a Form G-28 on behalf of the petitioner, the motion has not been properly filed by an affected party and cannot be accepted.

We acknowledge that 8 C.F.R. § 103.3(a)(2)(v)(A)(2) and its subsections indicate that, when an appeal is otherwise properly filed except for the omission of a Form G-28, the proper course of action is to obtain the Form G-28 from the attorney. Nevertheless, this is a requirement specifically in regard to appeals, rather than motions. The regulations governing motions at 8 C.F.R. § 103.5 do not state that all of the regulations at 8 C.F.R. § 103.2 apply to motions as well as to appeals. Instead, only selected provisions are said to apply to motions as well as to appeals. *See* 8 C.F.R. § 103.5(a)(7). 8 C.F.R. § 103.3(a)(2)(v)(A)(2) is not among those specified provisions.

Furthermore, even if 8 C.F.R. § 103.3(a)(2)(v)(A)(2) did apply to motions, that regulation applies only "when an appeal is otherwise properly filed." Here, the motion was not otherwise properly filed. Any motion to reopen 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 CIS where it is demonstrated that the delay was reasonable and was beyond the control of the petitioner. 8 C.F.R. § 103.3(a)(1)(i). 8 C.F.R. § 103.5a(b) allows an additional three days to account for service of the decision by mail.

Here, the AAO issued its prior decision on December 23, 2005. To be timely, a motion to reopen that decision should have been filed no later than January 25, 2006. The present motion was filed more than a year later, on February 1, 2007. The attorney does not even mention this major delay, let alone attempt any explanation. Therefore, the attorney has not shown that the delay was reasonable and beyond the control of the petitioner.

Each of the above-stated grounds is separately and independently a sufficient basis for a finding that the motion has not been properly filed. The motion must, therefore, be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed.