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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



D-2

FILE: EAC 04 236 52140 Office: VERMONT SERVICE CENTER Date: OCT 09 2008

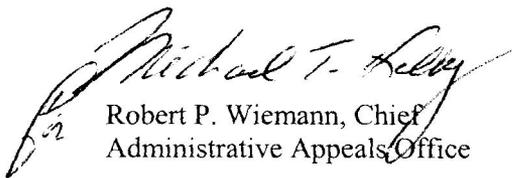
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed two subsequent appeals. The matter is again before the AAO on motion to reopen or reconsider. The petitioner's submission 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 complete motion within 30 days after service of the unfavorable decision, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The AAO issued its most recent decision on November 20, 2007. However, CIS did not receive the petitioner's motion in filing condition until January 10, 2008, 51 days after the decision was issued. Accordingly, the motion was untimely filed, and the petitioner has not demonstrated that the delay was reasonable and beyond its control.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing a motion to reopen or reconsider. As the motion was untimely filed, it must be rejected.

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ORDER: The motion is rejected