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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



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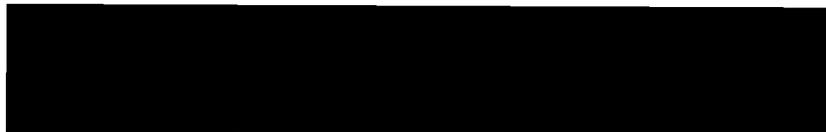
Office: VERMONT SERVICE CENTER

Date: JUN 01 2010

IN RE:

Petitioner:

Beneficiary:



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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center denied the instant nonimmigrant visa petition. The Chief, Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO pursuant to a motion to reopen or reconsider. The motion will be dismissed as untimely filed.

The record indicates that the AAO issued the decision dismissing the appeal on October 8, 2009. The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that the affected party, if it desires to file a motion to reconsider or reopen, must file that motion within 30 days of the decision the motion seeks to reopen. 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 motion must be submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction. 8 C.F.R. § 103.5(a)(1)(iii)(E). The instructions on page one of the decision of the AAO correctly informed the petitioner that the record had been returned to the Vermont Service Center and that any motion should be sent there. The instructions correctly referred the petitioner to 8 C.F.R. § 103.5 for the requirements of a motion. The instructions correctly noted the time available for such a filing as per 8 C.F.R. § 103.5(a)(1)(i).

Although the instructions indicated that, consistent with the regulations, the petitioner should submit any motion in this matter to the Vermont Service Center, counsel initially submitted the instant motion to the AAO on November 6, 2009. The AAO correctly rejected and returned that motion, reiterating that any such motion must be filed with the Vermont Service Center. Counsel then submitted the motion to the Vermont Service Center on November 13, 2009, 35 days after the decision dismissing the appeal. Accordingly, the motion was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing a motion. As the motion was untimely filed, it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) for failure to meet applicable filing requirements.

**ORDER:** The motion is dismissed.