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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY



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

D2

[REDACTED]

Date: **SEP 01 2011**
IN RE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER [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:

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was not filed in a timely manner, and rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on April 6, 2010. On May 11, 2010, counsel for the petitioner filed an appeal seeking review of the director's decision. After reviewing the record, the AAO rejected the appeal as the appeal had not been filed in a timely manner. Any appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The petitioner has now filed a motion seeking to reconsider the appeal that was rejected as untimely filed. The rejection it seeks to have reconsidered was issued on October 6, 2010. The instant motion, however, was not accepted for processing until January 18, 2011, or 104 days after the rejection was issued. Unlike a motion to reopen, there are no exceptions for an untimely filed motion to reconsider, which must be filed within 33 days of the decision that the motion seeks to reconsider. *See* 8 C.F.R. § 103.5(a)(1)(i); 8 C.F.R. § 103.5a(b). Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed. As the instant motion to reconsider was untimely filed, it must be dismissed.

ORDER: The motion is dismissed.