

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

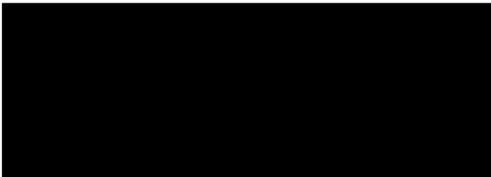
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

D6



FILE:

Office: VERMONT SERVICE CENTER

Date: **MAR 15 2010**

IN RE:

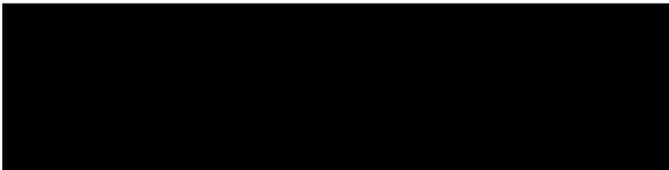
Petitioner:

Beneficiary:



PETITION: Petition for Alien Fiancé(e) Pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was approved by the Director, Vermont Service Center. Based upon information obtained from the beneficiary during her visa issuance process at the U.S. Consulate General in Guangzhou, China, the director determined that the beneficiary was not clearly eligible for the benefit sought. The director then denied the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is before the AAO on motion to reopen and reconsider. The motion will be dismissed and the AAO decision, dated March 17, 2009, will be affirmed.<sup>1</sup>

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of China, as the fiancé(e) of a United States citizen pursuant to § 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements because it was not timely filed. The AAO mailed its decision to the petitioner on March 17, 2009. The Form I-290B, Notice of Appeal or Motion, was properly received by the Vermont Service Center on May 1, 2009, 45 days after the decision was issued. Neither counsel nor the petitioner presents any evidence for USCIS to consider regarding the delay in timely filing the motion. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, the motion will be dismissed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion is dismissed. The AAO's decision dated March 17, 2009 is affirmed. The petition is denied.

---

<sup>1</sup> The AAO notes that the director did not have jurisdiction to render a decision on the petitioner's May 1, 2009 motion filing. The AAO, therefore, withdraws the director's October 27, 2009 decision and shall render a decision on the petitioner's May 1, 2009 motion filing.