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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



U.S. Citizenship  
and Immigration  
Services

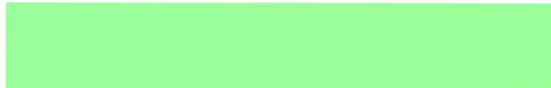


Date: FEB 21 2013

Office: VERMONT SERVICE CENTER

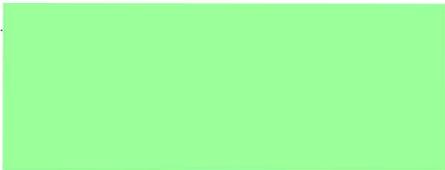
FILE: [REDACTED]

IN RE: Petitioner:  
Beneficiary:



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

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.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequently filed appeal and subsequent motion to reopen and reconsider. The matter is now before the AAO on a second motion to reopen and reconsider. The motion 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 or the attorney or representative of record must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. 8 C.F.R. § 103.8(b). The date of filing is not the date of mailing, but the actual date of receipt at the designated filing location. 8 C.F.R. § 103.2(a)(7)(i). With regard to the motion to reopen, an untimely filing may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the petitioner's control.

The record indicates that the AAO dismissed the petitioner's previous motion to reopen and reconsider on April 27, 2012 and properly gave notice to the petitioner that it had 30 days to file a motion to reconsider or reopen the decision.

Although the Form I-290B, Notice of Appeal or Motion, is dated May 25, 2012, it was not received by the Vermont Service Center until May 31, 2012, or 34 days after the AAO's dismissal was issued. Accordingly, the motion was untimely filed.

The petitioner has neither claimed nor provided evidence to establish that delay in filing the motion beyond the permitted time period was reasonable and was beyond the petitioner's control. Accordingly, the untimely filing of the motion cannot be excused and the untimely filed motion must be rejected. *See* 8 C.F.R. § 103.5(a)(1)(i).

**ORDER:** The motion is rejected as untimely filed.