



U.S. Citizenship  
and Immigration  
Services

(b)(6)

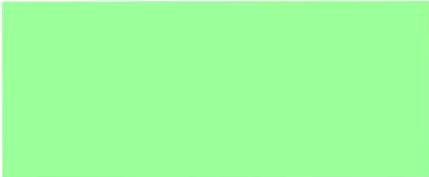


Date: **APR 17 2014** Office: VERMONT SERVICE CENTER FILE:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

4 Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal and subsequent motion to reopen and reconsider. The petitioner filed a second motion to reopen and reconsider that was dismissed as untimely filed. The matter is now before the AAO on a third motion to reopen and reconsider. The motion will be dismissed.

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 a 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 appeal and its subsequently filed motion to reopen and reconsider. The petitioner then filed a second motion to reopen and reconsider. The second motion was received 34 days after the dismissal of the first motion, and was accordingly dismissed as untimely on February 21, 2013. The matter is now before the AAO again on a third motion to reopen and reconsider.

Although the instant Form I-290B, Notice of Appeal or Motion, is dated March 21, 2013, it was not received at the designated filing location until March 27, 2013, or 34 days after the AAO's most recent decision. Accordingly, the motion instant 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 to reopen cannot be excused.

A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Accordingly, as the motion was not filed within the required timeframe, it will be dismissed.

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

In visa petition proceedings, the petitioner bears the burden of proving eligibility for the benefit. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The motion is dismissed.