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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 20 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider or reopen. The motion will be dismissed.

The motion is untimely. Under the provisions of 8 C.F.R. § 103.5(a)(1)(i), a motion to reopen or reconsider must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The regulation at 8 C.F.R. § 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. The AAO issued its decision on March 28, 2003. The petitioner's motion to reopen or reconsider was originally mailed to the AAO, which returned the motion and fee with instructions to file it with the service center. The motion with the proper fee was received by the service center on July 31, 2003, 125 days after the AAO issued its decision. The motion was therefore filed untimely.

The regulation at 8 C.F.R. § 103.5(a) provides that the agency may, in its discretion, accept a motion beyond this time frame if the petitioner demonstrates that the delay was reasonable and beyond his or her control. Counsel argues that the petitioner's good faith efforts in attempting to file the motion in the correct location are demonstrated by the fact that the Nebraska Service Center is referenced in the caption to the motion. Counsel further asserts that the receipt of the motion by the AAO should be deemed constructive receipt by the service center, as the AAO "obviously" supervises the service center.

Counsel's assertion is without merit. The decision instructed the petitioner that any motion to reopen or reconsider must be filed with the office that originally made the decision in its case. Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. The AAO does not exercise supervisory authority over the service center.

Counsel's arguments do not establish that the delay in filing the motion to reopen or reconsider was reasonable and beyond his control.

ORDER: The motion is dismissed.