U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

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D8

[redacted]

FILE: EAC 01 269 52751 Office: VERMONT SERVICE CENTER Date: APR 13 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center on November 19, 2001. A subsequent appeal was rejected as untimely, and was treated as a motion to reopen. The director affirmed his initial decision and denied the visa petition on August 7, 2002. The petitioner appealed the director's decision dated August 7, 2002. The Administrative Appeals Office (AAO) dismissed the appeal. The petitioner filed a motion to reopen on February 8, 2003, which the AAO dismissed on July 18, 2003. The petitioner filed another motion to reopen on August 21, 2003, 34 days after the AAO's last decision.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

> Any motion to reconsider an action by [CIS] filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before [CIS] must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

If the director's decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "[a] motion that does not meet applicable requirements shall be dismissed."

In the instant case, the AAO issued its decision dismissing the petitioner's motion to reopen on July 18, 2003. The petitioner subsequently filed a third motion to reopen and reconsider on August 21, 2003, more than 33 days after the decision was mailed to the petitioner. The petitioner requests that CIS excuse the delay in filing the instant motion to reopen, stating that the blackout that occurred in the northeastern United States caused him to lose information on his computer. While the blackout was beyond the control of the petitioner, the motion consists of approximately one page of written material so it is reasonable to expect the petitioner to file its motion within 33-days of the decision. Further, the petitioner failed to establish that the blackout caused the delay. He failed to indicate exactly when and for how long the blackout affected him. Consequently, the AAO must dismiss the petitioner's motion as untimely filed.

ORDER: The motion is dismissed.