



U.S. Department of Justice

Immigration and Naturalization Service

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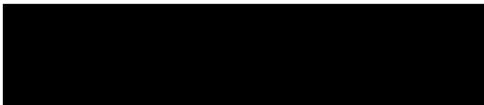
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FEB 2 2001

File: WAC 99 100 52969 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen 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 the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be summarily dismissed.

The petitioner provides software and services to semiconductor manufacturers. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On the Form I-290B Notice of Appeal, filed on February 9, 2000, counsel indicated that a brief would be forthcoming within sixty days. To date, nearly a year later, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

8 C.F.R. 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On the appeal form, counsel argues that the director did not afford the petitioner an opportunity to submit further evidence prior to the denial of the petition. Because no new evidence accompanies the appeal statement, it is not clear what new evidence (if any) the petitioner would have submitted in response to a request by the director.

Counsel makes no specific allegation of any erroneous conclusion of law or statement of fact in the director's decision. The allegation of a procedural flaw, in this instance, is not sufficient. While the director did not request further evidence, the most expedient remedy for this omission would be to accept, on appeal, whatever evidence the petitioner would have submitted previously had the director requested such evidence. Given that nearly a year has elapsed with no further submissions evident in the record, it is not at all clear that the petitioner would have submitted substantial new documentation in response to a hypothetical request for evidence from the director.

Because counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is summarily dismissed.