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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

Public Copy

File: [redacted] Office: Texas Service Center Date: JUL 12 2001

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and the Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is now before the Associate Commissioner on motion. The motion will be dismissed.

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy.

The Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, summarily dismissed the appeal. The AAO noted that while counsel indicated on the appeal, dated July 24, 1998, that she would submit additional documentation within 30 days, as of 22 months later, the AAO had received nothing further.

On motion, counsel challenges the Service Center's original denial. A motion, however, must address the decision which it seeks to reopen. Where a decision was made on procedural grounds, the motion must address those procedural grounds. Counsel does not assert that she submitted additional evidence or a brief in support of the appeal. Rather, her only discussion of the basis of the AAO's decision is to argue:

> To sit on his appeal for over two years, and then summarily dismiss it without even addressing his claims raised since February 1998 in the rebuttal to the Notice of Intent to Deny, adopted and re-urged on appeal, is wrong.

As stated in the AAO's previous decision, the only statement made on appeal was the following:

> The denial of my petition for classification for EB-1 was erroneous, as I am an alien of extraordinary ability in the area of athletics, specifically track and field, and more specifically the long-jump and triple-jump.

As further stated by the AAO, citing 8 C.F.R. 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. On appeal, counsel had not specifically addressed the reasons stated for denial and had not provided any additional evidence. The AAO is not precluded from summarily dismissing an appeal simply because it fails to adjudicate the appeal immediately after the expiration of the 30 days requested to supplement the appeal or because the petitioner had previously submitted evidence. If the latter were the case, no appeal could be summarily dismissed as nearly every petition is supported by documentation or a brief at some point. The appeal, therefore, was properly dismissed.

ORDER: The motion is dismissed.