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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



Public Copy

JUN 6 2001

File: WAC 97 113 54279 Office: California Service Center Date:

IN RE: Petitioner: [Redacted]
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: Self-represented

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 immigrant visa petition was denied by the Director, California Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations, as was an untimely motion filed by the petitioner. The matter is now before the Associate Commissioner on a second motion to reopen. The motion will be dismissed.

The petitioner seeks classification 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 as a freelance researcher of international security. The director determined the petitioner had not established that he has earned sustained national or international acclaim, and denied the petition on August 21, 1997. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the decision of the director on appeal, and dismissed the appeal on December 22, 1997.

On January 29, 1999, the AAO dismissed the petitioner's first motion on the grounds that it was not timely filed. The AAO also noted that, even if the motion had been accepted, it did not meet the requirements for a motion to reopen or to reconsider, as enumerated in the regulations at 8 C.F.R. 103.5(a)(2) and (3).

The petitioner has now filed a second motion. In this motion, the petitioner addresses points raised in the Service Center director's denial decision of August 21, 1997. The proper forum for raising these arguments was on appeal from that decision. At issue in this current proceeding are the grounds for the dismissal of the petitioner's first motion.

8 C.F.R. 103.5(a)(1)(i) requires that a motion to reopen or reconsider must be filed within thirty days of the underlying decision, except that failure to file during this period may be excused at the Service's discretion when the petitioner has demonstrated that the delay was reasonable and beyond the control of the petitioner.

8 C.F.R. 103.5(a)(2) states "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

8 C.F.R. 103.5(a)(3) states, in pertinent part:

A motion for reconsideration 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 . . . [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

8 C.F.R. 103.5(a)(4) states "[a] motion that does not meet applicable requirements shall be dismissed."

The AAO previously found that the petitioner's first motion was untimely because it was not submitted with the correct fee during the allotted 30-day period. In his new motion, the petitioner does not address this key ground for dismissal and therefore he has not overcome it or otherwise demonstrated that the AAO's prior dismissal of the motion was in error.

None of the information provided on motion has any bearing on the AAO's dismissal of the prior motion. The regulations clearly preclude an open-ended period for reopening the underlying petition. The petitioner cannot now reopen the petition by providing arguments or evidence which should have been submitted with the appeal or with the first motion.

Because the petitioner has offered no argument or evidence to demonstrate that the AAO erred in dismissing the prior motion, the petitioner's new submission does not qualify either as a motion to reopen or as a motion to reconsider as defined above, and the AAO has no basis for revisiting the grounds for dismissing the underlying appeal, or for the director's denial of the original petition. The petitioner cannot simply demand repeated adjudications of the petition until he obtains the desired result.

We note that the petitioner has since attempted to supplement the record with additional information, submitted weeks after the filing of his latest motion. The regulations pertaining to the filing of motions do not make any provision for submitting further evidence in this way; any new evidence must be submitted at the time that the motion itself is filed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. That burden has not been met, as the petitioner has again not provided any new facts or additional evidence to overcome the previous decision of the Associate Commissioner. Accordingly, the previous decisions of the director and the Associate Commissioner will not be disturbed, and the motion will be dismissed.

ORDER: The decision of the Associate Commissioner dated January 29, 1999, is affirmed. The motion is dismissed.