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U.S. Department of Justice

Immigration and Naturalization Service

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invasion of personal privacy

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



File: EAC 01 051 50062

Office: Vermont Service Center

Date: JUL 10 2002

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:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be summarily 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 in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 Form I-290B Notice of Appeal, filed on January 14, 2002, counsel indicated that a brief would be forthcoming within thirty days. To date, over four months later, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

The statement on the appeal form reads simply “re-submitting this evidence with a new brief explaining why [the petitioner] should be granted I-140 on the basis of EB1-2 Outstanding Professor or Researcher.” Counsel does not dispute the director’s determination that the petitioner has failed to establish eligibility for the classification originally sought, and thus counsel does not contest the denial of the petition or otherwise allege Service error.

With regard to counsel’s assertion that the petitioner will establish eligibility under a separate classification as an outstanding professor or researcher, there is no provision in statute, regulation, or case law which permits a petitioner to change the classification of a petition once a decision has been rendered. The filing of one petition, with one filing fee, does not grant a petitioner the right to request multiple adjudications under different classifications until the petition is finally approved. If the petitioner desires consideration under more than one classification, he must file one petition for each classification sought.

Furthermore, an alien cannot self-petition for classification as an outstanding professor or researcher. The Service regulation at 8 C.F.R. 204.5(i)(1) allows only United States employers to file petitions for aliens seeking that classification. Therefore, all other issues aside, counsel’s only statement on appeal concerns the petitioner’s intent to seek a classification that he cannot seek for himself. Nothing that the petitioner might have submitted during the requested (and now elapsed) 30-day period would have overcome this basic regulation, and it would serve no purpose to consider the merits of any claim the petitioner may make in this regard.

Inasmuch as 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 dismissed.