

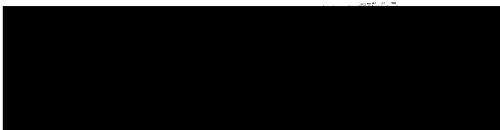


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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC 99 067 52559

Office: Vermont Service Center

Date: 28 MAR 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:

Self-represented

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 E. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner, Examinations, summarily dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner, a bicycle shop, had initially indicated that 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 as a mechanic/engineer. 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. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, summarily dismissed the petitioner's appeal because the petitioner had offered no substantive response to the director's findings. The petitioner had argued that the beneficiary was the best qualified applicant for the position, a factor which cannot suffice to establish eligibility as an alien of extraordinary ability.

On motion, two officials of the petitioning company indicate that they accidentally chose the wrong visa classification on the Form I-140 visa petition. The officials observe the then-approaching deadline for certain immigration benefits under section 245(i) of the Act, and state that the beneficiary should not "lose out" on those benefits owing to their error. They ask that the petition be readjudicated under "a suitable classification." There is, however, 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, let alone after an appeal has been filed and summarily dismissed. If the petitioner desires to seek a different classification for the beneficiary, then the petitioner must file a new visa petition with the appropriate fee and any other required documentation. We note that different classifications have different evidentiary requirements, and therefore even if we were able to adjudicate a single petition under multiple classifications, the petition may still be subject to denial because those documents (such as, for instance, an approved labor certification from the Department of Labor) are not in the record.

While we understand the petitioner's desire for the beneficiary to be able to avail himself of various benefits that are available only for a limited period, we cannot waive or otherwise disregard the statutory deadlines and limitations. Furthermore, we note that, before the denial of the petition, the director had notified the petitioner of the requirements pertaining to the extraordinary ability classification, and informed the petitioner that more evidence was necessary. At this time, before any decision had been rendered, the petitioner offered no indication that he had selected the wrong classification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

**ORDER:** The Associate Commissioner's decision of May 10, 2001 is affirmed. The petition is denied.