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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-01-251-53874 Office: Vermont Service Center

Date: OCT 07 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 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 rejected.

The petitioner 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. The petitioner seeks to employ the beneficiary as a store manager. The director determined the petitioner had not established the beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

According to 8 C.F.R. 103.3(a)(2)(i), an appeal must be filed with the office where the unfavorable decision was made within 30 days after service of the decision. 8 C.F.R. 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period.

The director issued his decision on February 21, 2002. On March 22, 2002, the Service received an appeal on this matter signed solely by the beneficiary. 8 C.F.R. 103.3(a)(1)(iii) states, in pertinent part:

(B) Meaning of affected party. For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

8 C.F.R. 103.3(a)(2)(v) states:

Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

On April 3, 2002, the director returned the appeal signed by the beneficiary and advised that the petitioner must sign the appeal.

The Service received the appeal properly signed by the petitioner on April 26, 2002. The appeal was therefore filed untimely.

Moreover, the director denied the petition because the petitioner had not submitted any evidence that the beneficiary is one of the very few at the top of his field or that he enjoys sustained national or international acclaim. The director advised the petitioner of the 10 regulatory criteria for this classification, three of which must be met. On appeal, the beneficiary writes that he qualifies for his job, has experience, speaks English and Spanish, is young, and wants to remain in the United States. Neither the petitioner nor the beneficiary address the basis of the director's decision or submit new evidence. As stated in 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. Thus, even if we did not consider the appeal late, it would be summarily dismissed.

8 C.F.R. 103.3(a)(2)(v)(B) states that an appeal that is not filed within the time allowed must be rejected as improperly filed; however, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion.

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.

As stated above, the petitioner does not submit any new evidence or make any legal arguments based on precedent decisions. As such, the appeal does not appear to constitute a motion to reopen or reconsider.

ORDER: The appeal is rejected.