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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: WAC 97 095 51042 Office: California Service Center

Date: OCT 29 2002

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

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, California Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal and the petitioner filed a motion to reopen. After granting the motion to reopen, the Associate Commissioner for Examinations affirmed the denial of the petition. The matter is now before the Associate Commissioner for Examinations on a subsequent motion to reopen. The motion will be dismissed.

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. 103.5(a)(1)(i) states, in pertinent part:

(1) When filed by affected party-- Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, 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 was beyond the control of the applicant or petitioner.

The Administrative Appeals Office ("AAO") affirmed its prior determination in a decision dated September 21, 2001. On October 30, 2001, the Service received a letter and fee from the beneficiary stating that the letter constituted a motion to reopen and reconsider. The motion contains the following statement from the beneficiary: "Because [the petitioner] has no good health therefore I apply for the position (petitioner) for myself [sic]." In this matter, the motion has not been filed by the petitioner, nor by any entity with legal standing in the proceeding.

The beneficiary cites a brief portion of the AAO's decision, claiming that "corresponding evidence had been sent to [the Service] long ago." The beneficiary, however, did not specifically address the AAO's other findings. Included with the motion was documentation that the petitioner had previously submitted. The beneficiary indicated that additional evidence in support of the motion would be provided at a later date.

On April 15, 2002 and August 30, 2002, the beneficiary provided additional documentation in support of the motion. The regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances to supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows the submission of evidence in furtherance of an already-filed motion. The filing of a motion does not guarantee an open-ended period in which to supplement the record. A request

for motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for the Service to grant an extension in order to await future correspondence that may or may not include evidence or arguments. The beneficiary's motion was unaccompanied by arguments based on precedent decisions or new evidence relevant to the regulatory criteria at 8 C.F.R. 204.5(h)(3). Furthermore, the motion ignored specific issues presented in the AAO's prior decisions. For example, the AAO has twice noted that there is no evidence to confirm that the beneficiary's patents have been granted.

Additionally, it is noted that the motion was untimely filed. 8 C.F.R. 103.5(a)(1)(i) states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. 8 C.F.R. 103.5a(b) adds three days to the prescribed period when service of a decision is by mail, as in this case. Even allowing for the extra three days, the motion was untimely.

8 CFR 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." The motion was not filed by an affected party, was unaccompanied by arguments based on precedent decisions or by new evidence pertaining to the regulatory criteria at 8 C.F.R. 204.5(h)(3), and was not filed within the required thirty days. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed.