

U.S. Department of Homeland Security

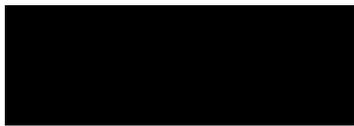
Citizenship and Immigration Services

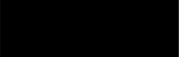
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invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536



File:  Office: NEBRASKA SERVICE CENTER

Date: DEC 9 - 2003

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

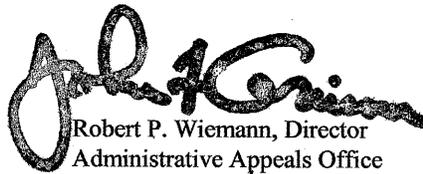
**INSTRUCTIONS:**

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 Citizenship and Immigration Services (CIS) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The petitioner then filed a motion to reopen, which the AAO dismissed. The petitioner has filed 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 in the arts. 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 AAO concurred with the director and dismissed the petitioner's appeal on its merits on January 7, 2002, although we note that the initial appeal was devoid of substantive content and could have been summarily dismissed.

The petitioner filed an untimely motion to reopen, again devoid of substantive content. The petitioner indicated that a supplement would follow, but the record contains no such supplementary submission. The AAO dismissed the motion on May 19, 2003, partly because of its untimely filing, and partly because the regulations do not provide for the filing of incomplete motions to be supplemented at a later time.

CIS regulations at 8 C.F.R. § 103.5(a) state, in pertinent part:

- (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. . . .
- (3) Requirements for motion to reconsider. 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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.
- (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

In the latest motion, the petitioner mentions some of his prior submissions as "proof of being a well-established artist," but the AAO already addressed the petitioner's evidence in its dismissal notice of January 7, 2002. The mechanism for filing motions to reopen or to reconsider is a means to remedy adjudicative error, not a means by which a petitioner may indefinitely prolong or repeat the adjudication of an already-denied petition. If an appeal or motion is dismissed, the filing of a subsequent motion that does not attempt to address the basis for the dismissal does not compel a *de novo* review of the underlying petition.

The AAO based its May 19, 2003 decision on two factors: (1) the untimely filing of the petitioner's motion, and (2) the absence of any argument or evidence. In his latest motion, the petitioner does not address or rebut either of these grounds. The petitioner simply submits several new exhibits for consideration.

All of the new documents concern developments that took place between January and June of 2003, mostly concerning business agreements with various galleries to promote and sell the petitioner's artwork. None of this evidence, on its face, establishes sustained acclaim or extraordinary ability; it merely demonstrates that the petitioner has actively sought to sell his paintings. None of this evidence existed in January 2000, when the petitioner filed the petition. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which indicates that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. None of these documents from 2003 indicate that the petition was approvable in January 2000, or that the AAO erred in dismissing the petitioner's previous motion in May 2003.

Given the petitioner's repeated filings regarding this proceeding, we stress that if the petitioner desires to file yet another motion, that motion must establish that this present decision is in error. It cannot suffice for the petitioner simply to produce more documentation regarding his work as an artist. Such documentation should have been submitted with the petitioner's initial appeal. The petitioner must overcome all of AAO's findings, in addition to the director's findings, as well as establish that he was an acclaimed artist in January 2000 and remains so at present. A motion to reopen is not merely an extension of the original petition.

The petitioner has provided no documentation or argument to rebut the grounds for AAO's May 19, 2003 dismissal of his prior motion, or the January 7, 2002 dismissal of his appeal. The petitioner's submission does not meet the requirements of a motion to reopen or a motion to reconsider. Accordingly, the motion will be dismissed.

**ORDER:** The motion is dismissed.