

U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[Redacted]

File: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: DEC 22 2003

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)

ON BEHALF OF PETITIONER:

[Redacted]

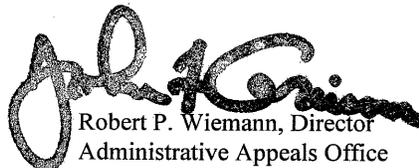
INSTRUCTIONS:

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 initially approved by the Director, California Service Center. Upon further consideration, the director determined that the petition had been approved in error. The director revoked the approval of the petition, after first serving due notice of intent to revoke. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal 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 sciences. The petition was filed on June 11, 2002. The director approved the petition on September 6, 2002, but subsequently concluded the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. On November 19, 2002, pursuant to CIS regulations at 8 C.F.R. § 205.2(b), the director informed the petitioner that the approval would be revoked unless the petitioner submitted evidence, within 30 days, to overcome several specified shortcomings in the record of proceeding.

On November 26, 2002, counsel responded, stating that the petitioner "is at present traveling abroad and would return only in the first week of January 2003." Counsel requested "a fresh time period of the usual 87 days granted for the reply to any Request for Evidence so that we may reply to the present Notice with proper documentary evidence." Counsel stated that this request for additional time "is not being made to delay the proceedings in the present case or to gain time." The director granted additional time to submit a substantive response.

On April 4, 2003, the director revoked the approval of the petition, stating "since the extension was granted, the [petitioner] has not submitted any documentation to the Service. More than a reasonable amount of time was afforded to offer evidence in support of the petition." The sole ground stated on the notice of revocation was the petitioner's failure to submit any substantive response to the notice of intent. On appeal, counsel does not contest the director's finding that the petitioner never offered a substantive response to the notice of intent. Instead, counsel discusses the concerns mentioned in the notice of intent.

In the present instance, the notice of revocation states only one ground for denial, that being the petitioner's failure to submit any substantive response to the notice of intent to revoke. The regulations consistently indicate that a petitioner has a limited period of time to respond to a request for further evidence or notice of intent to revoke. If a petition is denied or revoked because the petitioner fails to offer a substantive response, the petitioner cannot simply treat the appeal as another chance to respond to that request or notice.

Where the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the visa petition is adjudicated, evidence submitted on appeal will not be considered for any purpose, and the appeal will be adjudicated based on the record of proceedings before the Service. In such a case, if the petitioner desires further consideration, he or she must file a new visa petition. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). In this instance, the director provided the petitioner a reasonable opportunity to respond to the notice of intent to revoke, and provided still more time to respond pursuant to counsel's request. The

petitioner did not avail himself of this opportunity to rebut or contest the grounds stated in the notice of intent. Pursuant to the above case law, the AAO need not give any consideration to the arguments and evidence that should have been submitted in response to that notice, but were deferred until the appeal.

We note that counsel, in requesting additional time, specifically referred to “the usual 87 days granted for the reply to any Request for Evidence” as described at 8 C.F.R. § 103.2(b)(8). That same regulation states “the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted.” In other words, the petitioner’s opportunity to provide the required evidence ends upon the expiration of the response period.

The approval of the petition was revoked because the petitioner failed to offer any substantive response to the notice of intent during the allotted period. Counsel does not dispute this finding on appeal. The petitioner does not have an indefinite period in which to supplement a deficient filing. The appeal is not simply a second (or, in this case, third) chance to respond to that notice. To hold otherwise would effectively make meaningless all of the regulatory provisions that indicate that a petitioner has only a limited time in which to respond to such notices, and turn the notice of revocation into little more than a *de facto* extension of the time allotted for a response to the notice of intent to revoke.

Generally, the decision to revoke approval of an immigrant petition will be sustained, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intention to revoke. *Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988).

We note that the petitioner has also filed a Form I-485 application to adjust status, which was denied owing to the revocation of the approved petition. Counsel, on appeal, contests the denial of the adjustment application. The regulations, however, contain no provision to allow the appeal of the denial of an adjustment application, and the director informed the petitioner in the denial notice that the denial of the adjustment application cannot be appealed. Therefore, counsel’s contention that the adjustment application should be reinstated falls outside our appellate jurisdiction and consideration.

This decision does not preclude the filing of a new petition with a new fee. However, the priority or processing date of this petition will not attach to a later petition. Any grounds underlying the revocation of the present petition can also be taken into consideration when adjudicating any future petition, unless the basic fact pattern has changed (for example, if evidentiary shortcomings in the current petition are not repeated).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.