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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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 21 2003

IN RE: Petitioner:
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:

[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 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

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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 director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel stated: "The Service erred in finding that the petitioner did not satisfy the standard for an EB-1 immigrant visa petition, particularly in light of the fact that the Nebraska Service Center has previously approved the petitioner's O-1 [nonimmigrant] visa."

The approval of an O-1 nonimmigrant visa petition on behalf of a given alien does not in any way compel the Service to approve a subsequent visa petition under section 203(b)(1)(A) of the Act on behalf of that same alien. Each petition must be adjudicated on its own merits based on the evidence submitted to support that petition. Furthermore, there is no statute, regulation, or case law that requires the approval of an immigrant visa petition under section 203(b)(1)(A) of the Act when the alien already holds an O-1 nonimmigrant visa.

Counsel indicated that a brief and/or evidence would be submitted to the Administrative Appeals Office ("AAO") within thirty days. Counsel dated the appeal March 20, 2002. As of this date, more than nine months later, the AAO has received nothing further.

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.

Counsel has not specifically addressed the director's findings on appeal. Nor has counsel offered any additional evidence or arguments pertaining to the regulatory criteria set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.