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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

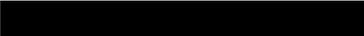
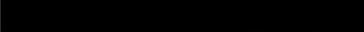
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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

JUL 03 2003



File:  Office: Vermont Service Center Date: 
EAC 01 211 52647

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

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 Bureau of Citizenship and Immigration Services (Bureau) 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, Vermont Service Center. The Administrative Appeals Office ("AAO") dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and to reconsider. The motion will be dismissed.

8 C.F.R. § 103.5(a)(1)(i), in pertinent part, provides:

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.

8 C.F.R. § 103.5(a)(1)(iii) provides:

(iii) Filing Requirements--A motion shall be submitted on Form I-290A, and may be accompanied by a brief. It must be--

(A) In writing and signed by the affected party or the attorney or representative of record, if any;

(B) Accompanied by a nonrefundable fee as set forth in § 103.7;

(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

(D) Addressed to the official having jurisdiction; and;

(E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

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 Bureau policy.

The AAO affirmed the director's denial in a decision dated August 30, 2002. The Service Center received a letter from the petitioner on September 23, 2002, stating that the letter constituted his motion to reopen and reconsider. The motion, however, was not properly filed.

On September 26, 2002, the Service Center issued a notice stating: "If you wish the attached letter to be considered as your Motion to Reopen/Reconsider, please annotate the letter as such, sign with an

original signature and return with the required fee of \$110.00.”

On October 10, 2002, the petitioner responded to the Service Center’s request; however, his response did not identify the receipt number of the underlying petition.

On November 12, 2002, the Service Center issued a notice requesting the petitioner to provide the receipt number for his petition.

On December 5, 2002, the petitioner responded to the Service Center with the requested information. More than three months had elapsed since the AAO issued its decision. The petitioner’s motion was not properly filed within the required thirty days and he has not demonstrated that this delay was reasonable and beyond his control. The motion must therefore be dismissed as untimely filed.

Even if we were to consider the petitioner’s motion, its claims are unsubstantiated by affidavits or other documentary evidence. Further, the motion is unsupported by pertinent precedent decisions to establish that the AAO’s decision was based on an incorrect application of law or Bureau policy.

The petitioner’s assertions about the beneficiary’s stage performance at the “Green Room,” her development of a speedwriting method while at Howard University, and her 212 page written work about the internet are unsupported by evidence that would satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has not specifically addressed the AAO’s findings and has not provided any additional evidence that existed as of the petition’s filing date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that beneficiaries seeking employment based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 CFR § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.