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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FEB 24 2004

FILE: EAC 02 103 52062 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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 of the Administrative Appeals Office 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.

Mari Johnson

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. The motion will be dismissed.

The petitioner seeks to classify the beneficiary 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. The director determined the petitioner had not submitted any evidence to establish the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The AAO affirmed the director's decision and reiterated the director's finding that the record is entirely devoid of substantive evidence.

The petitioner has filed a second appeal. AAO decisions cannot be appealed, but the petitioner may file a motion to reopen or reconsider. Therefore, we will consider the petitioner's latest filing to represent a *de facto* motion.

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. 8 C.F.R. § 103.5(a)(2). 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion, in its entirety, consists of the statement "to continue the process for my petition I-140" and the indication that further evidence will follow within 30 days. To date, seven months after the filing of the motion, the record contains no further submission. Also, there is no provision in the regulations to allow a petitioner to supplement a motion after it has been filed.

The motion, like the entire record of proceeding before it, contains no material information or evidence at all. Because the petitioner provides no evidence of any kind, and offers no substantive argument, it appears that the petitioner filed the motion only to keep the proceeding active. Nevertheless, pursuant to 8 C.F.R. § 103.5(a)(1)(iv), the filing of a motion has no effect on other immigration proceedings pertaining to the beneficiary.

The petitioner in this case has submitted no evidence at all, and has made no effort to demonstrate that the beneficiary qualifies for the extremely restrictive immigrant classification sought in this proceeding. The filing of additional frivolous motions in this matter will not extend any rights, benefits or privileges to the beneficiary. An alien cannot remain in the United States indefinitely, under color of law, simply by filing a series of empty motions. Furthermore, even if the petitioner were to submit all of the required evidence in a new motion, this submission would not overcome the petitioner's failure to submit such evidence at an earlier time, despite repeated notifications specifying what those requirements are. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The petitioner's most recent filing does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, by regulation, the motion must be dismissed.

ORDER: The motion is dismissed.