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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 12 2004

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)

ON BEHALF OF PETITIONER:

[redacted]

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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition on September 6, 2002. On a service motion to reopen, the director determined that the petition had been approved in error. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore. The director ultimately exercised his discretion to revoke the approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed.

A motion to reopen must state the new facts to be provided 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 Citizenship and Immigration Services (CIS) policy. 8 C.F.R. § 103.5(a)(3).

The director notified the petitioner of his intention to revoke the visa classification preference petition on November 19, 2002, and informed the petitioner that he should respond to the notice no later than December 19, 2002. A letter from counsel dated November 26, 2002 was submitted to the service center requesting additional time in which to submit a response as the petitioner was traveling outside the United States, and counsel did not have a foreign address for the petitioner and was unable to reach him. The petitioner admitted that he had received the Notice of Intent to Revoke prior to his scheduled departure from the United States.

Counsel indicated that the petitioner would not be returning to the United States until the first week of January 2003. The service center granted the petitioner an additional 43 days, until February 1, 2003, in which to respond to the Notice of Intent to Revoke. However, the record does not reflect that the approval for the extension of time was ever communicated to the petitioner or counsel. The petitioner submitted no evidence in response to the Notice of Intent to Revoke and the director revoked his approval of the visa preference petition on April 4, 2003, based on the petitioner's failure to provide a substantive reply to the notice.

On appeal, the petitioner submitted evidence and a brief in support of his appeal. However, he did not claim that his failure to respond to the Notice of Intent to Revoke was based on CIS's failure to respond to his request for an extension.

On motion, the petitioner states that he did not submit substantive evidence in response to the director's Notice of Intent to Revoke because he was waiting for a reply to his request for an extension of time in which to respond to the notice. Counsel argues that the delay in responding to the notice was reasonable and beyond the control of the petitioner because neither counsel nor the petitioner received notice of the approved extension in order to respond. Counsel argues that the lack of notice from CIS misled the petitioner to wait for further instructions and thus he lost his chance of submitting substantial documentation before the director revoked his approval.

This argument is without merit. The regulation at 8 C.F.R. § 205.2(b) provides that, for revocation on notice: "[t]he petitioner or self-petitioner must be given the opportunity to offer evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval." The record is clear that the director gave the petitioner the requisite notice and the opportunity to offer evidence in support of the petition.

The petitioner's decision to file a request for an extension and then wait to see if it was granted before proceeding further was a considered decision and not reasonably based on any action or inaction of CIS. The record does not reflect that the petitioner made any attempt to provide a substantive response to the Notice of Intent to Revoke,

notwithstanding there had been no reply to his request for an extension. We do not find that it was reasonable for the petitioner to delay an attempt to respond to the notice until he received a response from CIS regarding his request for an extension. We further find that the CIS did not mislead the petitioner when it failed to respond to his request for an extension of time in which to respond to the director's notice.

Furthermore, the petitioner received notice that the director intended to revoke approval of his visa preference petition and that the petitioner needed to submit additional evidence if he wished to prevent the revocation. While we acknowledge that the timing of the petitioner's receipt of the notice was extremely inconvenient, it appears that neither the petitioner nor counsel made contingent plans to provide the requested evidence in the event the request for extension was not approved. According to counsel, the petitioner continued with his travel plans without providing counsel with a means to contact him. Further, the record does not reflect that either the petitioner or counsel contacted the service center to follow up on the request for an extension. We do not find that the petitioner's failure to provide the requested evidence was beyond his control.

The director properly exercised his discretion to revoke approval of the petition under Section 205 of the Immigration and Nationality Act, 8 U.S.C. § 1155.

As the petitioner failed to cite any precedent decisions in support of his motion to reconsider and does not argue that the previous decisions were based on an incorrect application of law or CIS policy, the petitioner's motion will be dismissed.

As the AAO noted in its prior decision, the petitioner is not precluded from filing a new petition with a new fee. However, the priority or processing date of the current petition will not attach to a later petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. 8 C.F.R. § 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.