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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 01 2004
WAC 01 112 50043

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion 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 motion, counsel for the petitioner states: "The petitioner will provide supplementary evidence.... However, detailed accounts and evidence of the petitioner's extraordinary ability is being held in top secret in his home country. Due to these circumstances, we are requesting an extension of time to receive and submit these documents."

The AAO's February 10, 2004 decision noted that counsel had "failed to explain how the petitioner was purportedly able to achieve sustained [national or international] acclaim if his work consists of closely guarded military secrets." Counsel does not address this issue on motion.

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 Citizenship and Immigration Services (CIS) policy.

The petitioner has not filed a proper motion to reopen or reconsider. The motion does not present any new facts or evidence relevant to the regulatory criteria at 8 C.F.R. § 204.5(h)(3), any clear reason for reconsideration, or any precedent decision to establish that the AAO's decision was based on an incorrect application of law or CIS policy.

Counsel indicated that a brief and/or evidence would be submitted to the AAO within 60 days. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an appeal once it has been filed. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit new evidence in furtherance of a previously-filed motion. The regulations grant the petitioner 30 days to contest the dismissal of the appeal via motion to reopen or reconsider, with no provision for extension or later submission of supplementary documentation. By filing a motion, the petitioner does not guarantee himself an open-ended period in which to supplement the record with evidence or arguments.

Here, the petitioner's request for motion did not meet the regulatory requirements of a motion to reopen or reconsider at the time it was filed. No provision exists for CIS to grant the petitioner's extension in order to await future correspondence that may or may not include evidence or arguments.

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.