

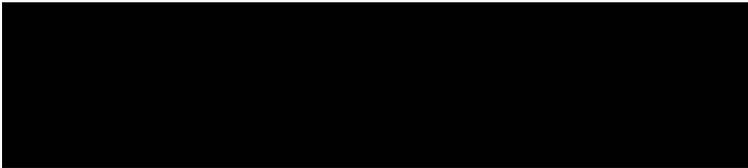
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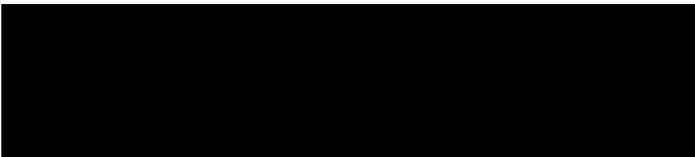


FILE: WAC 02 195 51698 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 2006

IN RE: Petitioner: [Redacted]  
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:



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*

*Sm* Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based immigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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, prior counsel indicated that he would submit a brief and/or additional evidence within 30 days. Prior counsel dated the appeal October 10, 2003. On March 31, 2004 the AAO summarily dismissed the appeal after having received nothing further from prior counsel.

On October 20, 2004, almost seven months later, the petitioner, through counsel, files the instant motion to reopen. Counsel asserts that the appeal was summarily dismissed due to prior counsel’s ineffective assistance.

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

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.

The record reveals that the AAO’s notice was mailed to the petitioner at his address of record and to prior counsel at his address of record. The petitioner has not demonstrated that he or prior counsel advised the AAO of any change of address. In fact, counsel acknowledges that the petitioner received the AAO’s notice dismissing the appeal. As such, the petitioner has not demonstrated that his failure to file a timely motion was due to Citizenship and Immigration Services (CIS) error.

On motion, counsel asserts that while the petitioner received the dismissal, he did not “understand the meaning of it.” Regardless, counsel has not established that the petitioner’s failure to file the motion until almost six months after the regulatory deadline was reasonable and beyond the control of the petitioner.

**ORDER:** The motion is dismissed.