



U.S. Citizenship  
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Services

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[Redacted]

FILE: [Redacted]  
LIN 01 192 53717

Office: NEBRASKA SERVICE CENTER

Date: SEP 11 2006

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.

*Mai Johnson*

Σ Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. Accordingly, the director served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on December 6, 2004. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reconsider. 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. The director and the AAO previously determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

The regulation at 8 C.F.R. § 103.5(a)(1)(i), in pertinent part, states: "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." If the decision was mailed, the motion must be filed within 33 days. See 8 C.F.R. § 103.5a(b). 8 C.F.R. § 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Finally, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(B) requires that a motion be accompanied by the proper fee.

The AAO affirmed the director's decision and dismissed the petitioner's appeal on September 9, 2005. The service center received a correspondence from counsel on October 7, 2005, stating that the correspondence constituted the petitioner's motion to reconsider. However, the motion was not accepted because it had not been properly filed with the correct fee.

On October 13, 2005, the service center issued a notice stating that the motion could not be accepted because the proper fee of \$385.00 was not attached. The notice further stated: "Since the case is not properly filed, a priority or processing date cannot be assigned."

On October 21, 2005, the petitioner responded to the service center's notice by submitting the motion with the proper \$385.00 fee. In this matter, the petitioner's motion to reconsider was not properly filed until October 21, 2005, or 42 days after the AAO's September 9, 2005 decision was issued. Therefore, the motion must be dismissed as untimely filed.

Further, 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. In this instance, the petitioner's motion did not cite any pertinent precedent decisions, nor did it specifically challenge any of the AAO's findings pertaining to the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.