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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2007
WAC 04 172 52124

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

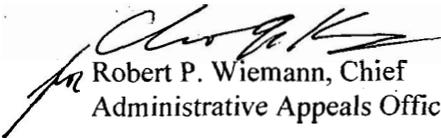
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[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.


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. Thus, the director denied the petition on May 19, 2005.

On appeal, the petitioner indicated that she would submit a brief and/or additional evidence within 30 days. The petitioner dated the appeal June 17, 2005. On February 16, 2006, the AAO summarily dismissed the appeal after having received nothing further from the petitioner.

On November 24, 2006, the petitioner, through counsel, files the instant “Motion Requesting the Service to Reconsider its Decision of May 19, 2005.” By filing the previous appeal, however, the petitioner transferred jurisdiction to the AAO, which issued the last decision on the matter. The regulation at 8 C.F.R. § 103.5(a)(1)(ii) provides that the “official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction.” The official that made the latest decision is the AAO. Thus, our decision is the only decision the petitioner may now seek to reopen or reconsider.

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 her address of record at the time. The petitioner has not demonstrated that she advised the AAO of any change of address prior to the issuance of the February 16, 2006 decision. The mere fact that the petitioner was not previously represented does not demonstrate that the eight month delay in filing the motion was reasonable and beyond her control.

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 Service policy.

In addition to being untimely, the most recent decision in this matter is the summary dismissal issued by the AAO on February 16, 2006. That is the only decision the petitioner can seek to reopen. Nothing in the motion, however, suggests that the AAO's decision summarily dismissing the appeal was issued in error. Specifically, the petitioner has not demonstrated that the original appeal alleged any specific erroneous conclusion of law or statement of fact either initially or in a subsequent filing submitted within the 30 day period in which the petitioner was permitted to supplement the appeal or even prior to the AAO's decision dated February 16, 2006.

As the motion is untimely filed and does not allege any error in the latest decision in the proceeding, it must be dismissed.

ORDER: The motion is dismissed.