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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted]

Office: Vermont Service Center

Date: AUG - 5 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen 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 beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and certified to the Associate Commissioner for Examinations for review. The Associate Commissioner remanded the case to the director for further consideration and entry of a new decision. The director has not yet issued a new decision. The matter is now before the Associate Commissioner on motion. The motion will be dismissed, the previous remand order for a new decision is affirmed.

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.

On October 12, 2000, this office remanded the case back to the director pursuant to interim regulation 8 C.F.R. 204.12(d)(2) for further consideration under newly-enacted section 203(b)(2)(B)(ii) of the Immigration and Nationality Act and entry of a new decision. The director has not yet issued a new decision. On November 8, 2000, the petitioner submitted a letter addressed to the director but accompanied by the fee required of a motion. In his letter, the petitioner requests that his petition be approved under the above-mentioned newly-enacted section of law.

The interim regulation requires that cases such as the petitioner's be remanded to the director. In his letter, the petitioner does not seem to question our decision to remand the case to the director. Rather, he appears to be requesting that the director approve the petition. In light of the above, the petitioner's letter, although accompanied by a fee, does not appear to constitute a motion to reopen or reconsider the Associate Commissioner's decision as defined in the regulations quoted above.

Accordingly, the Associate Commissioner's decision dated October 12, 2000, remanding the case to the director, is affirmed. That order for further action and entry of a new decision remains in force.

ORDER: The motion is dismissed. The Associate Commissioner's remand order is affirmed. As stated in the previous order, the new decision, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for Review.