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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File:

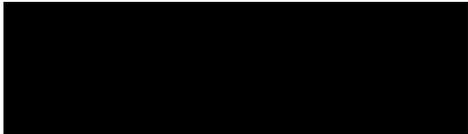
Office: Texas Service Center

Date: 06 DEC 2002

IN RE: Petitioner:
Beneficiary:

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, Texas Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal, SRC-00-009-50300. While that appeal was pending, the petitioner filed a subsequent appeal, SRC-00-245-51285. That appeal will be rejected.

The petitioner designs, develops and distributes computer software systems and provides educational services. It seeks to employ the beneficiary permanently in the United States as a project manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not meet the job requirements set forth on the labor certification.

On the initial appeal, filed October 8, 1999, counsel argued that the director erred by denying the petition because the word "progressive" did not appear on the labor certification. The director forwarded the appeal to this office in November 1999.

On August 10, 2000, while the initial appeal was still pending, instead of supplementing the appeal, the petitioner filed a new appeal based on the injunction in Chintakuntla et al. v. INS, No. C99-5211 MMC (N.D. Cal. May 4, 2000). That court decision held that pending petitions on behalf of class members, including on appeal, must be adjudicated under the March 20, 2000 Memorandum. The court did not instruct those class members with pending appeals to file new appeals or even expressly permit such an action.

On January 10, 2001, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, dismissed the initial appeal pursuant to the March 20, 2000 Memorandum. In addition to the issues raised by the director, the AAO also concluded that the beneficiary did not have the equivalent of an advanced degree. The AAO reasoned that while 8 C.F.R. 204.5(k)(2) permits the substitution of a bachelor's degree or "a foreign equivalent degree" plus five years of progressive experience, the beneficiary did not have a foreign degree that, by itself, was equivalent to a U.S. bachelor's degree.

The regulations do not provide for the filing of multiple, concurrent appeals on the same decision. As stated above, the court injunction upon which the instant appeal is based did not provide for multiple, concurrent appeals. As such, the petitioner's second appeal is rejected.

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. Moreover, a motion must allege errors in the decision it seeks to reopen.

As the August 10, 2000 appeal was filed prior to the AAO's decision, it did not address the AAO's decision, including the new issue raised by the AAO. The August 10, 2000 appeal only discussed the director's alleged errors. As such, the August 10, 2000 appeal does not meet the requirements



of a motion to reopen or reconsider the AAO's decision. While 8 C.F.R. 103.3(a)(2)(iii) allows the director to consider an appeal as a motion to reopen to issue a favorable decision, the regulations do not provide for the filing of a motion on the director's decision while that decision is pending before the AAO on appeal.

ORDER: The appeal is rejected.