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U.S. Department of Justice
Immigration and Naturalization Service

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

[Redacted]

File: [Redacted] Office: Nebraska Service Center

Date: 28 FEB 2002

IN RE: Petitioner:
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:

[Redacted]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Associate Commissioner affirmed the director's denial. The matter is now before the Associate Commissioner on motion. The motion will be dismissed.

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

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.

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.

The Administrative Appeals Office ("AAO") affirmed the director's denial in a decision dated January 10, 2000. The Service received a letter and fee from counsel on March 1, 2000, stating that the letter constituted the petitioner's motion to reopen and reconsider. Counsel provided a copy of the envelope containing the AAO's decision reflecting a postmark of January 24, 2000. A hand-written notation on the envelope indicated its receipt by counsel on January 28, 2000. The motion stated no new facts, was unsupported by evidence, and failed to provide any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law. Counsel's letter merely stated: "This decision is unsubstantiated by the evidence provided. Moreover, the petitioner seeks to provide further evidence that contradicts the AAU finding." Counsel added: "A brief in support of this motion will follow within thirty days with all supporting documents and evidence vital to the petition."

On April 10, 2000, seventy-two days after counsel claims to have received the AAO's decision, counsel submitted a brief alleging that the Service's decision was based on an incorrect application of law. No further evidence was provided. Counsel has not demonstrated that this delay was reasonable and beyond the control of the petitioner. The brief shall be treated as an untimely motion to reconsider.

A request for motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for the Service to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

The regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals,

and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit evidence in furtherance of an already-filed motion. By filing a motion, the petitioner does not guarantee herself an open-ended period in which to supplement the record. The regulations grant the petitioner thirty days to contest the dismissal of the appeal via motion to reconsider, with no provision for extension or later submission of supplementary documentation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. 8 CFR 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 Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed.