



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

File: WAC-98-126-54575 Office: California Service Center

Date: JAN 03 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 which 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 which 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 which 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, California Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is now before the Associate Commissioner on motion. The motion will be rejected.

The Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, dismissed the petitioner's appeal on April 10, 2000. The petitioner filed his motion on May 17, 2000.

8 C.F.R. 103.5(a)(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 AAO's decision stated, "any motion must be filed with the office which *originally* decided your case." (Emphasis added.) Despite this language, the petitioner initially submitted his motion to the AAO, which forwarded the motion to the Service Center. As stated above, the Service Center received the motion on May 17, 2000, more than 33 days after the AAO's decision.

Service records reveal that the AAO's notice was mailed to the petitioner at his address of record and to counsel at his address of record. The AAO's notice advised the petitioner of the proper office with which to file a motion. As such, the petitioner has not demonstrated that his failure to file a timely motion was beyond his control or due to Service error.

It is noted that the motion primarily relies on documentation of the petitioner's current research projects. A successful motion relying on documentation of new accomplishments would have to explain how the petitioner's current research establishes his eligibility at the time of filing.

ORDER: The motion is rejected.