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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



File: EAC-99-063-50092 Office: Vermont Service Center

Date: APR 08 2003

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)

ON BEHALF OF PETITIONER:



PUBLIC COPY

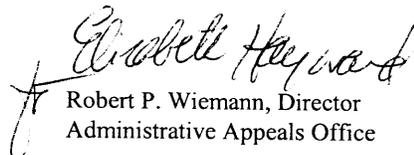
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and was summarily dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel stated that he would submit a brief and/or evidence to the Administrative Appeals Office (AAO) within 30 days. The Service (now the Bureau) received the appeal on September 20, 2000.

On June 13, 2002, the AAO summarily dismissed the appeal, asserting that the record contained no additional documentation.

On July 10, 2002, the petitioner filed the instant motion. Counsel asserts that additional documentation was submitted on December 6, 2000 and May 21, 2002. The petitioner submits copies of briefs dated December 6, 2000 and May 21, 2002. The petitioner did not submit a postal receipt reflecting that these briefs were actually submitted in December 2000 and May 2002. The record now contains the May 21, 2002 brief which was received by the AAO on May 22, 2002. Nevertheless, 8 C.F.R. § 103.3(a)(vi) provides that the affected party may submit a brief in support of an appeal at the time it is filed. 8 C.F.R. § 103.3(a)(vii) provides that the affected party may request additional time in which to submit the brief, which the AAO may grant for good cause. The Form I-290B allows the appellant to indicate that he will submit a brief and/or evidence within 30 days or request additional time to be granted only for good cause shown. Counsel indicated that he would submit a brief and/or evidence within 30 days. At no time did counsel request more than 30 days and support that request with an explanation. Thus, even assuming that the petitioner submitted the December 6, 2000 brief as claimed, it was not filed within the 30 days requested. The regulations do not provide for an indefinite period in which to supplement the appeal.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 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 Bureau policy. On motion, counsel does not argue or provide evidence that a brief was timely filed. Thus, the basis of the motion is not that the AAO's June 13, 2002 summary dismissal was in error. As the motion does not allege an error in the decision it seeks to reopen, it does not meet the requirements of a motion to reopen or a motion to reconsider.

ORDER: The motion is dismissed.