

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

B5

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: MAR 17 2003

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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

[Redacted]

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent 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 seeks employment as a research associate at Case Western Reserve University (CWRU). 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 has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The director denied the petition on June 22, 1999. The petitioner filed an appeal on July 26, 1999, offering no substantive arguments but indicating that the petitioner would be “sending a brief and/or evidence to the AAU [now AAO] within 30 days.” As of June 19, 2001, the record of proceeding contained no further submission from the petitioner, and the AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v), which states, in pertinent part, “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

On July 10, 2001, the petitioner filed the instant motion to reopen. Counsel argues that the petitioner did in fact submit supplemental materials that were “never considered by the Appeals Office.” The petitioner submits copies of these materials, along with copies of postal receipts showing that the petitioner mailed the supplement to the Nebraska Service Center on September 21, 1999. The Service Center received the submission on September 27, 1999.

The regulation at 8 C.F.R. § 103.3(a)(2)(viii) states that, if a petitioner submits a brief after the filing of an appeal, “the affected party shall submit the brief directly to the AAU.” This regulation is reflected repeatedly on the I-290B Notice of Appeal, which provides AAO’s mailing address. The postal receipts submitted by the petitioner prove that the petitioner sent the materials to the wrong address.

With regard to the petitioner’s assertion on appeal that the brief would be forthcoming “within 30 days,” the postal receipts confirm that no fewer than 57 days elapsed between the July 26, 1999 filing of the appeal and September 21, 1999, when the petitioner mailed the supplement. A further six days elapsed before the delivery of the submission. The evidence provided by counsel indicates that the petitioner did not, in fact, submit any supplementary materials during the requested 30-day period. The AAO’s previous finding is entirely consistent with this newly submitted evidence.

8 C.F.R. § 103.3(a)(2)(vii) does not guarantee a petitioner an indefinite period of time to supplement the record. Rather, it requires the petitioner to “make a written request to the AAU for additional time.” These requests are not binding on the AAO. Rather, “[t]he AAU may, for good

cause shown, allow the affected party additional time to submit a brief.” The wording of the appeal form allows a pre-approved 30-day extension but makes it clear that a request for more than 30 days “[m]ay be granted only for good cause shown” (emphasis in original).

In this instance, counsel did not indicate in advance that more than 30 days would be necessary, or offer any explanation as to why good cause existed for a further extension. Counsel simply declared that a brief would follow within 30 days, but in fact 63 days elapsed between the delivery of the appeal and the delivery of the brief and supplemental materials. With no advance request for that length of time, and no explanation of good cause, the AAO would have been under no obligation to accept this untimely submission, even if the petitioner had mailed it to the correct address as required by regulation and specified on the appeal form.

Upon review, we can find no procedural or factual error underlying the AAO’s summary dismissal of June 19, 2001. It is the petitioner who failed to comply with the relevant regulations, which in turn are reflected in the clear wording of the Form I-290B Notice of Appeal. Such failure by the petitioner is not a valid basis for reopening the appeal. Therefore, the AAO’s prior decision will not be disturbed.

ORDER: The motion is dismissed.