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**U.S. Citizenship
and Immigration
Services**

[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 20 2004

IN RE: Petitioner: [REDACTED]
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)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner is a talent agency; the beneficiary seeks employment as an actor. The petitioner asserts that the beneficiary is eligible for precertification under Group II of Schedule A. The director found that the beneficiary was ineligible for Schedule A precertification.

8 C.F.R. § 103.3(a)(1)(v) 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.”

The director erroneously informed petitioner that any appeal should be filed on Form EOIR-29. The petitioner filed that form in a timely manner on August 22, 2002. The appeal included no substantive claim or evidence; it consisted entirely of a request for “an additional 90 days to file a motion to reopen.”

On October 9, 2002, the director informed the petitioner that the appeal should have been filed on Form I-290B. The petitioner filed a new appeal on that form on January 13, 2003. Once again, the appeal contains no substantive assertions; it consists entirely of a request for “an additional 90 days to submit the evidence requested.” At this point, over 140 days had elapsed since counsel’s previous request for a 90-day extension.

To date, over a year after counsel’s latest request for an extension, and over seventeen months after the initial filing of the appeal, the record contains no substantive response to the grounds for denial. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

We note that the most recent extension request was predicated on the petitioner’s efforts to obtain a labor certification for the beneficiary. Obtaining a labor certification for the beneficiary at this late date would not overcome the grounds for denial or preserve the petition’s filing date. Rather, the appropriate action would be for the petitioner to file a new petition, predicated on the approved labor certification. The filing date of the new petition would be the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petitioner’s efforts to obtain a labor certification on the beneficiary’s behalf are immaterial to the proceeding at hand, and thus do not lend relevant substance to the appeal.

ORDER: The appeal is dismissed.