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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: VERMONT SERVICE CENTER

Date: **JAN 21 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 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 initially approved by the Director, Vermont Service Center. The director revoked the approval of the petition on June 8, 2001. The Administrative Appeals Office dismissed a subsequent appeal on January 17, 2003. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

On February 14, 2003, the petitioner wrote to the director, stating she “would like to withdraw both the I-140 [immigrant petition] and I-485 [application to adjust status].” On March 10, 2003, the petitioner again wrote to the director, stating “I wrote in haste to withdraw my I-140 and I-485 petitions, which I did not mean to.” The petitioner attributes her earlier withdrawal to her “complete dismay and shock” following the dismissal of her appeal.

CIS regulations at 8 C.F.R. § 103.2(b)(6) state “[a] withdrawal may not be retracted.” The regulations provide no exception to this policy, whether owing to the petitioner’s state of mind or for any other reason. Therefore, the withdrawal is permanent and irreversible.

Even if the petitioner had not permanently foreclosed all further consideration of her petition by withdrawing it, the motion at hand would have been dismissed. 8 C.F.R. § 103.5(a)(1)(i) states that any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except when the petitioner can demonstrate that any delay was reasonable and beyond the control of the petitioner. Note that the regulations, as worded, make no provision to excuse the late filing of a motion to reconsider. The director’s discretionary authority to accept a late motion applies only to motions to reopen.

In this instance, the motion was filed on April 24, 2003, more than three months after the date of the dismissal of the appeal. Counsel states that this delay was reasonable and beyond the petitioner’s control because the petitioner’s former counsel forwarded the dismissal notice to an outdated address and later ceased to represent the petitioner. The dismissal notice, however, was addressed to the petitioner at her Rochester address, with a copy sent to counsel. Subsequent letters from the petitioner continue to show the same Rochester address. Thus, while the attorney forwarded the copy to an incorrect address, another copy had already been mailed directly to the petitioner’s most recent address. Also, correspondence in the record shows that the petitioner was aware of the dismissal no later than February 10, 2003, during the 30-day period permitted for filing a motion. Later, on April 2, 2003, the director received a letter in which counsel informed the director that a motion would be forthcoming. The actual motion was filed three weeks later.

We further note that the motion documents submitted in April 2003 contain no substantive discussion of the grounds for dismissal. Instead, counsel states “[w]e anticipate filing the materials in support of the Motion by mid-May.” Counsel submitted supplementary materials, which the director received on May 16, 2003.

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 new evidence in furtherance of a previously filed motion, or to file a skeletal motion with the promise that supporting materials will follow at a later date.

The petitioner's withdrawal of February 10, 2003 cannot be withdrawn. The petitioner's motion is untimely and does not meet the requirements of a motion, and thus would have been dismissed even without the prior withdrawal.

**ORDER:** The motion is dismissed.