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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date: **MAR 18 2004**

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)

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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be 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 a member of the professions holding an advanced degree. The petitioner, an engineering and construction company, seeks to employ the beneficiary as a structural engineer. The director, in denying the petition, observed that the record does not contain an approved labor certification, and that the petitioner has not requested (or claimed that the beneficiary qualifies for) an exemption from the requirement of a job offer, and thus of a labor certification, in the national interest of the United States.

On appeal, counsel asserted “[t]he Beneficiary is statutorily eligible for the classification sought,” but offered no further argument. The director, in denying the petition, had in fact acknowledged that the beneficiary qualifies as a member of the professions holding an advanced degree. Therefore, counsel’s one-sentence statement is not relevant to the grounds for denial specified by the director. Counsel indicated that a brief would follow within 60 days. Fourteen months later, on May 12, 2003, the AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v), because the record contained no further submission, and no substantive response to the grounds for denial.

Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 103.5(a) state, in pertinent part:

- (1)(i) . . . 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 that failure to file before this period expires may be excused in the discretion of [CIS] where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. . . .
- (2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. . . .
- (3) Requirements for motion to reconsider. 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.
- (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The motion filed by counsel on the petitioner’s behalf consists of a two-page statement by counsel. In this statement, counsel states that the beneficiary “is entitled to a national interest waiver as a result of the job he is performing . . . because his lengthy practical experience make [sic] it easier for him to help his employer exploit and expand its sources of energy.” This statement does not address the basis for the summary dismissal of the appeal, specifically the petitioner’s failure to present substantive arguments or evidence during the time allowed for such submissions. Instead, the letter contains arguments that the petitioner should have made at or before the appellate stage.

The mechanism for filing motions to reopen or to reconsider is a means to remedy adjudicative error, not a means by which a petitioner may indefinitely prolong or repeat the adjudication of an already-denied petition. If an appeal is dismissed, summarily or otherwise, the filing of a subsequent motion that does not attempt to address the basis for the dismissal does not compel a *de novo* review of the underlying petition. The petitioner has shown no reason why the AAO's summary dismissal should not stand.

Furthermore, counsel refers to the motion as "timely," and the cover letter accompanying the motion is dated June 10, 2003, but the receipt stamp showing when CIS received the motion is dated August 5, 2003, nearly three months after the AAO's decision of May 13, 2003. The record contains no evidence that the motion was submitted in a timely manner, as required by 8 C.F.R. § 103.5(a)(1)(i).

The petitioner has not overcome or even contested the AAO's stated grounds for summarily dismissing the underlying appeal, and there is no evidence that the motion was timely filed. For the above reasons, the petitioner's submission does not meet the requirements for a motion to reopen or a motion to reconsider, and therefore, pursuant to 8 C.F.R. § 103.5(a)(4), the motion must be dismissed.

**ORDER:** The motion is dismissed.