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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, DC 20536



DEC 09 2003

File: EAC-02-059-53149

Office: Vermont Service Center

Date:

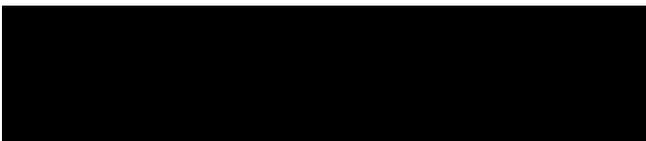
IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

IN 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 Citizenship and Immigration Services (CIS) 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.

for *Mari Johnson*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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 as untimely. The matter will be reopened on CIS motion, the AAO's decision of January 31, 2003 will be affirmed, and the petition will be denied.

The motion is untimely. 8 C.F.R. § 103.5(a)(1)(i), states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. 8 C.F.R. § 103.5a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Here, the AAO mailed its decision to the petitioner on January 31, 2003. The petitioner dated his motion February 28, 2003. CIS received the motion on March 3, 2003, and returned it to the petitioner for the proper fee. The decision was properly received by the Service Center on March 17, 2003.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. The cover page of the AAO's decision states, "any motion must be filed with the office that originally decided your case along with a fee of \$110." Thus, the submission of the motion without the proper fee was not reasonable or beyond the petitioner's control. For this reason, the motion will be dismissed.

In addition, on motion the petitioner asserts that documentation will be submitted that overcomes the AAO's concerns. As of this date, more than seven months after the motion was filed, this office has received nothing further. Regardless, 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. By filing a motion, the petitioner does not guarantee itself an open-ended period in which to repeatedly supplement the record with evidence.

Despite the above, review of the record reveals an inadvertent factual error in the AAO's previous decision. As such, we will reopen the matter for the limited purpose of correcting that error.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a tattoo artist. The director determined the petitioner had not established the beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

In its discussion of the petitioner's awards, the AAO stated that the beneficiary won second place for Overall Tattooed Female at the First Annual NY-NJ Tattoo Extravaganza. A review of the record reveals that the beneficiary actually won first place in this category. The AAO's conclusion that the beneficiary did not meet the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), however, was based not on the level of award received, but on the lack of evidence regarding whether these awards are

nationally or internationally recognized. For example, the AAO noted that both conventions at which the beneficiary received awards were the "first," and, thus, had no established reputation at the time the beneficiary won his awards. Thus, the AAO's mischaracterization of the beneficiary's first place award as a second place award had no bearing on the AAO's ultimate conclusion.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of January 31, 2003 is affirmed. The petition is denied.