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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

Public Copy

File: [redacted] Office: Texas Service Center Date: JUL 6 2001

IN RE: Petitioner: [redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The approved preference visa petition was revoked by the Director, Texas Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on motion. The motion will be dismissed.

The Administrative Appeals Office ("AAO") dismissed the appeal on February 1, 2001, because the appeal was frivolous. Counsel had requested an extension of 60 days in which to submit a brief but, more than eight months later, had failed to do so.

On motion, counsel now argues the merits of the underlying petition but fails to address the one pertinent issue, that is, the fact that she had filed a frivolous appeal. In what may be an attempt to address this issue, counsel asserts the petitioner now has new information which indicates the alleged new commercial enterprise is located in a rural area. Counsel fails to explain why data regarding the population of the area was not available at the time of filing the petition or even on appeal. Significantly, this was not even an issue in the director's decision.

The determination of whether to reopen or reconsider an AAO decision is limited to the question of whether the AAO decision was correct at the time it was made; for a decision based on procedural grounds, only procedural arguments are relevant. Counsel makes no claim that she had in fact set forth any legal arguments in this matter prior to February 1, 2001. Therefore, the AAO's decision will not be disturbed.[1]

ORDER: The motion is dismissed.

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[1] In addressing the director's decision, counsel asserts that there is no legal support for the director's conclusion that a petitioner cannot include the reinvestment of proceeds as part of his investment. While this decision will not address the merits of the director's decision for the reasons stated in the body of this decision, we refer counsel to Johannes De Jong v. INS, Case No. 6:94 CV 850 (E.D. Texas January 17, 1997).