

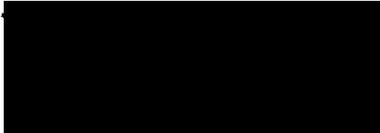


BY

U.S. Department of Justice  
Immigration and Naturalization Service

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



File: [Redacted] Office: Texas Service Center

Date: AUG 16 2002

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:



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 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 that 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, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. The Associate Commissioner for Examinations summarily dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5).

The director determined that the petitioner had failed to demonstrate that he had invested, or was in the process of investing, the requisite amount of lawfully obtained capital into a new commercial enterprise. The director further determined that the petitioner has failed to meet the employment-creation requirement.

On appeal, counsel merely stated the following:

1. All documentation requested was provided and was lost by your office.
2. When the documentation was re-requested by you, it was all resubmitted.
3. All documentation [sic] is attached.

The Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, summarily dismissed the appeal, stating:

On August 12, 2000, the director requested additional evidence. On February 6, 2001, the director advised the petitioner that his response had been lost and requested that the evidence be resubmitted. The record contains the petitioner's response to the second request. The director ultimately denied the petition on its merits, not for lack of prosecution or abandonment. The director specifically considered the petitioner's response to the second request for additional documentation. On appeal, counsel fails to address the specifics of the director's decision . . . and provides no *new* documentation.

(Emphasis in original.)

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. 103.5(a)(3), 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.

Now counsel argues the merits of the petition and resubmits documentation already in the record. A motion must explain why the decision it seeks to reopen was in error. Here, the petitioner seeks to reopen the AAO's decision of August 21, 2001. Counsel, however, has not addressed the AAO's reasons for issuing a summary dismissal. Specifically, counsel has not demonstrated, or even argued, that, *on appeal*, he specifically addressed the reasons for the director's denial and/or provided new evidence.



In light of the above, the petitioner's submission does not meet the requirements of a motion to reopen or reconsider the AAO's decision.

**ORDER:** The motion is dismissed.