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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536



File: SRC 02 202 54837

Office: TEXAS SERVICE CENTER

Date: **JUL 10 2003**

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



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 bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed. The previous decision of the AAO will be affirmed.

The petitioner is a university, seeking an extension of the validity of a visa petition granting O-1 classification of the beneficiary under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in medical science.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one of a small percentage at the very top of the field of medical science.

On motion, counsel for the petitioner submits a brief.

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. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and or evidence presented were unavailable at the time the prior decision was issued.

In the instant case, counsel for the petitioner asserts that the petitioner provides additional documentation as grounds for its motion to reopen, to show that the beneficiary has attained acclaim for his work. The petitioner did not state new facts on motion.

8 C.F.R. § 103.5(a)(3) states, in pertinent part, that:

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 Bureau policy.

Here, counsel for the petitioner cites unpublished decisions and a published decision that is not binding on the Bureau in this case.

8 C.F.R. § 103.5(a)(4) states, in part, that "[a] motion that does not meet applicable requirements shall be dismissed." Inasmuch as the petitioner failed to support its reasons for reconsideration with any pertinent precedent decisions, the motion must be dismissed.

On motion, counsel for the petitioner raises a new argument. Counsel asserts that the regulations relating to extensions of the validity of an O-1 petition validity and stay are distinct from the regulations setting forth the evidentiary criteria required for the adjudication of an initial O-1 petition; and therefore the director erred in re-adjudicating the O-1 petition on the basis of the eligibility criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii).

8 C.F.R. §214.2(o)(12) provides for an extension of stay to continue or complete the same event or activity as approved for the initial O petition. 8 C.F.R. § 214.2(o)(11) provides for the extension of the visa petition validity.

8 C.F.R. § 214.2(o)(11) states:

Extension of visa petition validity.

The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(O) of the Act on Form I-129, Petition for Nonimmigrant Worker, in order to continue or complete the same activities or events specified in the original petition. Supporting documents are not required unless requested by the Director. A petition extension may be filed only if the validity of the original petition has not expired.

Counsel's argument is not persuasive. Although there is a distinct paragraph in the regulations regarding requests for an extension of visa petition validity, the regulation expressly states that the director may request additional supporting documentation. By implication, the director may adjudicate the request for an extension of the visa petition, taking into account the merits of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The AAO decision dated February 27, 2003 is affirmed.