

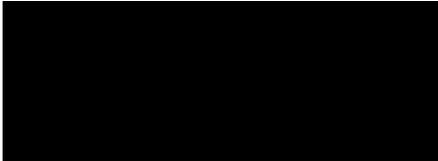
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



FILE: EAC 01 269 52751 Office: VERMONT SERVICE CENTER Date:

JUL 18 2003

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under 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:

SELF-REPRESENTED

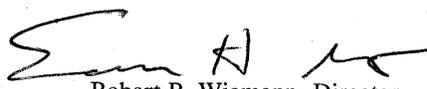
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director denied the nonimmigrant visa petition. The petitioner filed an untimely appeal that the director treated as a motion to reopen. The motion was granted and the decision affirmed. The petitioner subsequently appealed and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion. The motion will be dismissed. The AAO decision dated January 9, 2003, will be affirmed.

The petitioner is a "pool and billiard room." The beneficiary is a professional billiard player and an instructor. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to continue to employ him in the United States as an instructor of billiards and pool for a period of two years at a salary of \$35,470 per year.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in athletics.

On motion, the petitioner submits additional documentation.

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. Here, the petitioner provides documentation of a new fact, i.e., that the beneficiary won the 2003 United States Billiards Association National (USBA) Championship in February 2003. The petitioner also provided the Bureau with an affidavit written by Pedro Piedrabuena, a student of the beneficiary, stating that the beneficiary helped Mr. Piedrabuena reach the position of United States Champion in Three Cushion Billiards in 2002.

At the time of filing the petition, the beneficiary had not yet won the 2003 USBA National Championship; therefore he did not meet the regulatory criterion as of the date of filing the petition. In *Matter of Katigbak*, 14 I&N Dec. 45 (R.C. 1971), although an immigrant visa petition case, it was held that the beneficiary must be qualified at the time of filing the visa petition. In view of the language in section 101(a)(15)(O) of the Act, it must be concluded that the alien of extraordinary ability must likewise meet the eligibility criterion at the time of filing the nonimmigrant petition in her behalf. See *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (R.C. 1978).

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.

In review, the petitioner did not state reasons for reconsideration supported by precedent decisions.

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.

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

ORDER: The motion is dismissed.