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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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PUBLIC COPY

[Redacted]

FILE: [Redacted] LIN 06 250 51438

Office: NEBRASKA SERVICE CENTER

Date: **JAN 15 2008**

IN RE: Petitioner:
Beneficiary:

[Redacted]

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)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks classification 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 in athletics.¹ The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, previous counsel states: “The petition was supported by substantial evidence, including descriptions of the organizations and competitions.” The appellate submission was unaccompanied by arguments or evidence specifically addressing the pertinent regulatory criteria at 8 C.F.R. § 204.5(h)(3). Previous counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. The appeal was filed on March 14, 2007.

On August 6, 2007, more than four months later, the AAO received a letter from present counsel dated August 3, 2007 stating:

I am writing to inform you that [the petitioner] wishes to substitute counsel, and transfer representation from [previous counsel] to myself.

[The petitioner’s] reason for substituting counsel is that communication has broken down with [previous counsel]. Until this summer, [the petitioner] was not aware that his case had been denied and is on appeal, and at this time he is completely unclear as to what documentation has actually been submitted in support of his I-140 [petition], particularly since [previous counsel] failed to check any box on the I-290B form regarding future submission of a brief or evidence.

Counsel’s latter statement is incorrect. Under item 2 of the Form I-290B, Notice of Appeal to the AAO, previous counsel checked the box indicating that a brief and/or evidence would be submitted “to the AAO within 30 days” of the filing date.

In her letter dated August 3, 2007 and in a subsequent letter dated November 8, 2007, counsel requests a copy of the petitioner’s complete file and additional time to file a brief with supplemental evidence. Counsel’s August 3, 2007 letter was accompanied by an affidavit by the petitioner describing the alleged breakdown in communication with previous counsel. Along with the November 8, 2007 letter, counsel submitted correspondence from the Nebraska Service Center reflecting that a Freedom of Information Act (FOIA) request for the petitioner is currently pending.

With regard to the allegations relating to previous counsel, a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what

¹ The petitioner was initially represented by attorney Judith Sporn. In this decision, the term “previous counsel” shall refer to Judith Sporn.

representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against her and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). While the petitioner submitted an affidavit setting forth his allegations regarding the communication breakdown with previous counsel, the documentation of record does not establish that the petitioner has met the remaining two requirements (prongs 2 and 3).

In regard to counsel's request for additional time to submit a brief and further evidence, there is no regulation that allows the petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) states "[t]he affected party may make a written request to the [AAO] for additional time to submit a brief. The [AAO] may, for good cause shown, allow the affected party additional time to submit one." Pursuant to 8 C.F.R. § 103.3(a)(2)(vii), the petitioner must explain in advance that good cause exists for such an extension at the time the appeal is filed. In this instance, the petitioner initially indicated only that further documentation would be forthcoming within thirty days; he did not indicate that he needed additional time, nor has he shown good cause for such an extension by meeting the three requirements set forth in *Matter of Lozada*, *supra*. Further, there is no statutory or regulatory provision that allows for an extension of time to file an appellate brief while a FOIA request is pending.

As of this date, more than eight months after the appeal was filed by the petitioner, the AAO has received no appellate brief or further evidence. As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The petitioner has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.