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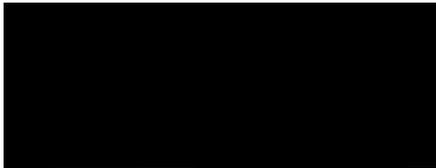
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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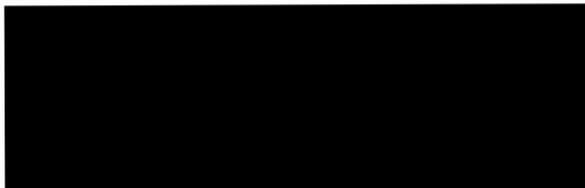
Office: VERMONT SERVICE CENTER

Date: NOV 21 2006

IN RE: Petitioner: [Redacted]
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)

IN BEHALF OF PETITIONER:



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.

3 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was not filed by anyone with standing in the matter. The AAO rejected the appeal without rendering a decision. The matter is now before the AAO on a motion to reopen. The motion will be rejected.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

The appeal was filed by [REDACTED] who submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative signed by the petitioner. On the Form G-28, [REDACTED] indicates that he is a "case manager." Pursuant to the regulations at 8 C.F.R. § 292.1(a), 8 C.F.R. § 103.3(a)(1)(iii) and 8 C.F.R. § 103.2(a)(2)(v), the AAO determined that the appeal had not been filed by the petitioner, nor by any entity with legal standing in the proceeding. Therefore, the AAO concluded that the appeal had not been properly filed, and must be rejected.

Counsel has now filed a motion seeking to reopen the appeal that was rejected, asserting that while improperly filed, the rejected appeal was timely. Thus, counsel asserts, the motion is being filed "to preserve" the petitioner's rights.

The petitioner has filed a motion seeking to reopen the appeal that was rejected as improperly filed. As the appeal was rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. According to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. The AAO did not enter a decision on this matter. Because the disputed decision was rendered by the director, the AAO has no jurisdiction over this motion and the motion must be rejected.

Moreover, the motion is untimely. The regulation at 8 C.F.R. § 103.5(a)(1)(i), states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The regulation at 8 C.F.R. § 103.a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Here, the AAO mailed its decision to the petitioner on April 24, 2006. Counsel dated his motion May 11, 2006, but the decision was properly received by the Service Center on August 30, 2006.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. The petitioner has failed to establish that the delay was either reasonable or beyond his control.

ORDER: The motion is rejected.