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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

LIN 04 079 52421

Office: NEBRASKA SERVICE CENTER

Date: **APR 06 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal with a finding of fraud. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(i) provides, in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, 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 was beyond the control of the applicant or petitioner.

If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). Service records reveal that the AAO's notice was mailed to the petitioner at his address of record at the time and to prior counsel at his address of record. The petitioner has not demonstrated that he or counsel advised the AAO of any change of address prior to the AAO's notice. The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E), relating to the filing requirements for motions, provides that a motion must be "[s]ubmitted to the office *maintaining the record* upon which the unfavorable decisions was made for forwarding to the official having jurisdiction." (Emphasis added.)

The AAO dismissed the petitioner's appeal on August 7, 2006. The instructions on the cover page of the decision stated that "[a]ll documents *have been returned to the office that originally decided your case*. Any further inquiry must be made to that office." (Emphasis added.) While prior counsel originally submitted the motion to the AAO, which was returned to prior counsel on September 7, 2006, the motion was properly filed *with the Nebraska Service Center* on September 26, 2006, 50 days after the AAO's decision.

In light of the above, the motion is untimely. Moreover, given the language on the cover page of the initial decision by the AAO and in the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E), the petitioner has not demonstrated that his failure to file a timely motion was beyond his control or due to U.S. Citizenship and Immigration Services (USCIS) error. Regardless, prior counsel indicated the motion was a motion to reconsider, not reopen. USCIS may only excuse the failure to time file a motion to reopen.

Moreover, the filing did not constitute a proper motion at the time of filing. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of a previously-filed motion.

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 USCIS policy.

The initial filing included a Form I-290B on which prior counsel asserted that the AAO had erred in its determination that the petitioner was ineligible for the classification sought and that the petitioner had willfully submitted a false document. Prior counsel asserted that he would submit a brief and or evidence to the AAO within 30 days. Subsequently, counsel supplemented the motion with a brief and a copy of the materials submitted on appeal. Counsel asserts that the petitioner's submission of a copy of what purports to be a *Newsweek* cover was inadvertent and that the AAO erred in finding that the petitioner's explanation lacked credibility.¹

The petitioner has not filed a proper motion to reopen or reconsider. His request, at the time it was filed, was not accompanied by any evidence or arguments based on precedent decisions. A request for motion must meet the regulatory requirements of a motion to reopen or reconsider *at the time it is filed*; no provision exists for USCIS to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

As the motion was untimely filed, the motion must be dismissed.

ORDER: The motion is dismissed.

¹ On April 6, 2006, the AAO requested the original of the cover because the magazine title is at an angle, the issue is undated, the petitioner's story is the only story listed on the cover and no accompanying story was submitted. In response, the petitioner submitted the "original" in his possession but conceded that it was probably not an authentic magazine cover although it was presented to him as such. The document submitted in response to the AAO's April 6, 2006 notice is on FujiFilm photograph paper. The AAO concluded that the petitioner's assertion that he mistakenly believed he was featured on the cover of a major international magazine lacked credibility.