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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  
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[Redacted]

FILE:

SRC 07 800 22964

Office: TEXAS SERVICE CENTER

Date:

**JAN 13 2010**

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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider filed by the beneficiary. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(A) and (C).

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) provides:

(iii) Filing Requirements – A motion shall be submitted on Form I-290B, and may be accompanied by a brief. It must be:

(A) In writing and signed by the affected party or the attorney or representative of record, if any;

(B) Accompanied by a nonrefundable fee as set forth in § 103.7;

(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

(D) Addressed to the official having jurisdiction; and;

(E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(A) provides that the motion be “signed by the affected party or the attorney or representative of record.” The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that the “‘affected party’ (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.”

The Form I-140, Immigrant Petition for Alien Worker, was filed by [REDACTED]. The motion to reconsider, however, was signed and submitted by the beneficiary. The motion has not been filed by the petitioner, nor by any entity with legal standing in the proceeding. Moreover, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C).

The regulation at 8 C.F.R. § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The motion to reconsider is dismissed, the AAO’s May 20, 2009 decision is affirmed, and the petition remains denied.