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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

B2

DATE: **FEB 15 2012**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed a motion to reopen and reconsider which was also dismissed by the AAO. The matter is now before the AAO on a subsequent motion to reconsider. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(C), 103.5(a)(3), and 103.5(a)(4).

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

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.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that a motion to reconsider “must be filed within 30 days of *the decision that the motion seeks to reconsider.*” [Emphasis added.] 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 United States Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The July 8, 2010 AAO decision dismissing the petitioner’s motion to reopen and reconsider stated:

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of “new,” a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. As cited above, with the exception of the three documents listed, the petitioner submitted evidence which was previously submitted, and therefore, will not be considered in this motion. Regarding the three documents submitted for the first time on motion, the petitioner failed to establish that the documents submitted on motion were not available and could not have been discovered or presented previously.

The AAO's July 8, 2010 decision also stated that the petitioner failed to support his July 28, 2009 motion with any legal argument, precedent decisions, or other comparable evidence to establish that the AAO's June 29, 2009 appellate decision was based on an incorrect application of law or USCIS policy.

The petitioner filed the instant motion on August 6, 2010 within thirty days of the AAO's July 8, 2010 decision. The documentation submitted by the petitioner in support of the instant motion does not establish that the AAO's latest decision was incorrect based on an incorrect application of law or USCIS policy. Rather than pointing to specific errors in the AAO's July 8, 2010 decision, the petitioner instead contests the correctness of the service center director's decision. For example, the petitioner asserts: "The Director of the Nebraska Service Center (hereinafter "the Director") misapplied the law . . . in finding that the documentary evidence submitted by [the petitioner] in support of his petition was not in and of itself indicative of sustained national or international acclaim" The petitioner's instant motion does not include legal arguments or precedent decisions indicating that the AAO's latest decision dismissing his motion to reopen and reconsider was incorrect based on the evidence of record. Moreover, the instant motion does not contain the statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). For this additional reason, the motion must be dismissed.

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 and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reconsider is dismissed, the decision of the AAO dated July 8, 2010 is affirmed, and the petition remains denied.