

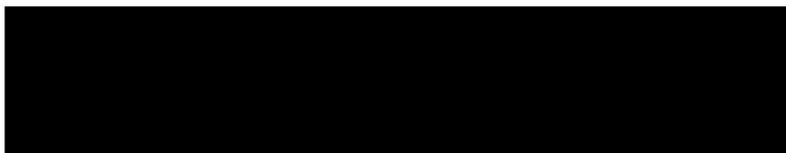
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



B2

DATE **JUL 17 2012**

Office: NEBRASKA SERVICE CENTER

FILE:



IN RE:

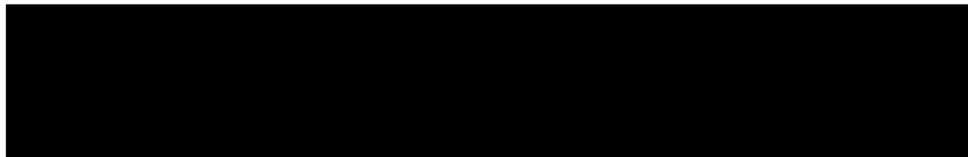
Petitioner:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition filed on October 14, 2008. The petitioner filed a motion to reopen and a motion to reconsider on December 17, 2009, and the Director, Nebraska Service Center denied the motion on February 1, 2010. The petitioner filed an appeal on February 25, 2010. The Administrative Appeals Office (AAO) denied the appeal on May 23, 2011. The matter is again before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion be “signed by the affected party or the attorney or representative of record” and be “[a]ccompanied 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.” The regulation at 8 C.F.R. § 103.5(a)(4) requires that “[a] motion that does not meet applicable requirements shall be dismissed.” In this case, although counsel submitted a brief cover letter, Form I-290B was signed by the beneficiary. In addition, the submission lacked the required statement regarding whether the validity of the decision of the AAO has been or is subject of any judicial proceeding. As such, the motions must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

Furthermore, pursuant to the regulation at 8 C.F.R. § 103.5(a)(1)(i), the motion must be filed “within 30 days of the decision” that the motion seeks to reopen or reconsider.

The record indicates that the service center director issued the decision on May 23, 2011. It is noted that the denial from the AAO properly gave notice of the thirty day requirement to the petitioner and to counsel with instructions to submit the motion “to the office that originally decided your case” and that “[t]he specific requirements for filing such a request can be found at 8 C.F.R. § 103.5.”

While the AAO notes that the motions were originally incorrectly filed with the AAO, the service center did not receive the motions until June 28, 2011, or 36 days after the decision was issued. Accordingly, the motions were untimely filed.

For the above stated reasons, considered both in sum and as separate grounds for dismissal, the motions to reopen and reconsider must be dismissed.

ORDER: The motion to reopen and the motion to reconsider are dismissed.