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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



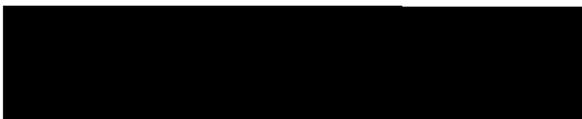
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DATE: JUL 27 2012

Office: TEXAS 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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Director, Texas Service Center, denied the employment-based immigrant visa petition on December 23, 2009. The Administrative Appeals Office (AAO) upheld the director's decision, and dismissed the appeal on June 1, 2011. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion will be dismissed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party or the attorney or representative of record must submit the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. See 8 C.F.R. § 103.8(b). The date of filing is not the date of submission, but the date of actual receipt with the required fee. See 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the AAO issued the decision on June 1, 2011. It is noted that the AAO properly gave notice to the petitioner that it had 33 days to file the motion. The notice further advised: "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 . . ."

Counsel dated the motion June 29, 2011. However, despite the clear instructions in the AAO's notice and on the Form I-290B, counsel sent the motion to the AAO. On July 6, 2011, the AAO returned the motion as improperly filed with the wrong office. U.S. Citizenship and Immigration Services (USCIS) received the motion on July 12, 2011, 41 days after the AAO issued the decision. Accordingly, the motion was untimely filed. Moreover, with respect to the motion to reopen, 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 the failure to file a timely motion was beyond the petitioner's control or due to USCIS error.

In addition, 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 petitioner has not filed a proper motion to reopen or reconsider. At the time of filing, his request 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.

Page 3

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 reopen is dismissed. The motion to reconsider is dismissed. The decision of the AAO dated June 1, 2011, is affirmed, and the petition remains denied.