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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

[redacted]

B7

File: [redacted] ffice: CALIFORNIA SERVICE CENTER Date: JAN 07 2011

IN RE: Petitioner: [redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to Section 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5)

IN 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 Director, California Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. 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 appeal 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. 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 June 4, 2010. The AAO's notice stated: "All motions must be submitted to the office that originally decided your case." On July 6, 2010, the petitioner submitted the motion to the AAO. The AAO returned the motion on July 7, 2010, advising that the motion should be submitted to the California Service Center. On July 19, 2010, 45 days after the date of the AAO's decision, the petitioner properly filed the motion with the California Service Center.

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 the failure to file a timely motion was beyond the petitioner's control or due to U.S. Citizenship and Immigration Services (USCIS) error.

Moreover, the petitioner indicated that he would send a brief and/or additional evidence to the AAO within 30 days. 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. His did not support his request with any evidence or arguments based on precedent decisions. A 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. Moreover, the AAO has received nothing further in the six months since the petitioner filed the motion.

As the motion was untimely filed and did not constitute a motion when filed, the motion must be dismissed.

ORDER: The motion is dismissed.