U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: EAC 01 200 55482 Office: VERMONT SERVICE CENTER Date: MAY 7 2003

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]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen 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 Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be denied.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(3) requires that a motion for reconsideration state the reasons for reconsideration and be supported by any pertinent precedent decisions. Because an appellate decision has already been rendered regarding this petition, any motion filed at this point must address the appellate decision; a post-appellate motion is not simply an extension of the appeal, or another opportunity to contest the director's underlying denial. On motion, the petitioner must show that the appellate decision was factually or legally incorrect at the time it was rendered.

In this instance, the AAO had summarily dismissed the petitioner's appeal on September 17, 2002. Counsel, on appeal, had not directly contested the director's grounds for denial. Instead, counsel stated that the petitioner was recovering from a lengthy illness, and required "an extension of six months – if possible – in order to enable him to gather all documents" necessary for the appeal. In summarily dismissing the appeal, the AAO stated:

> 8 C.F.R. 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."
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> 8 C.F.R. 103.3(a)(2)(vii) states that an affected party seeking additional time must show good cause for an extension. In this instance, counsel has argued that the petitioner's illness represents good cause for a six-month extension. The director originally granted the petitioner 12 weeks to submit further documentation. Pursuant to 8 C.F.R. 103.2(8), "additional time may not be granted," and any submission during the 12-week period will be considered a request for a decision to be rendered. The director, in denying the petition, had set forth specific grounds for denial, specifying inadequacies in the petitioner's documentation. The I-290B Notice of Appeal allows petitioners 30 days to file the appeal, and an additional 30 days to prepare supplemental materials. Thus, normal procedures allow a petitioner a total of five months to obtain and submit materials, in addition to whatever time the petitioner took to obtain the initial documentation prior to filing the petition. One month of these five elapsed between the issuance of the denial and the filing of the petitioner's appeal, leaving four

> months (assuming that the petitioner, during his illness, was not only incapacitated but unable even to arrange for others to obtain evidence on his behalf). Prior illness, from which the petitioner had recovered by the time the appeal was filed, is not good cause for six rather than four additional months to secure such evidence. Furthermore, in the appeal submission itself counsel does not rebut or even address the specific grounds for denial. The assertion that unspecified additional evidence will one day surface is not a substantive ground for appeal.

Thus, the AAO dismissed the appeal because (1) the petitioner did not identify specifically any erroneous conclusion of law or statement of fact on appeal, and (2) the petitioner had failed to show good cause for the extraordinarily long extension requested, because past illness or incapacity does not explain why the petitioner needs six extra months after he has already recovered. Any motion at this point must demonstrate that the AAO erred in those findings.

On motion, the petitioner simply submits a series of documents, many of them ten or more years old. The petitioner does not address the factors that led to the summary dismissal of the appeal, either by demonstrating that the appeal did specifically identify an erroneous conclusion of law or statement of fact in the director's decision, or by establishing that he had set forth good cause for a six-month extension to submit further evidence. Because the petitioner has not endeavored to show that the AAO's summary dismissal was in error, there are no valid grounds to disturb that decision.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992), citing *INS v. Abudu*, 485 U.S. 94, 107-108 (1988). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu,* 485 U.S. at 110. With the current motion, the petitioner has not met that burden. The motion to reopen will be denied.

ORDER: The motion is denied.