U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

PUBLIC COPY

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

B2

[redacted]

FILE: WAC-02-229-50421 Office: CALIFORNIA SERVICE CENTER Date: APR 14 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The AAO dismissed the appeal on November 19, 2003. On December 31, 2003, Citizenship and Immigration Services (CIS) received a Form I-290B and fee from counsel. Counsel asserted that a brief and/or additional evidence would be submitted to the AAO within 30 days.

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 that 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 Service policy.

The petitioner has not filed a proper motion to reopen or reconsider. The I-290B 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 CIS to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

Moreover, 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.

CIS records reveal that the AAO's notice was mailed to the petitioner at prior counsel's address of record. The petitioner has not demonstrated that she or counsel advised the AAO of any change of address. As such, the petitioner has not demonstrated that her failure to file a timely motion was beyond her control or due to CIS error.

ORDER: The motion is dismissed.