U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of privacy

[redacted]

File: [redacted] Office: Texas Service Center Date: JAN 03 2002

IN RE: Petitioner: [redacted]

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

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and certified to the Associate Commissioner for Examinations for review. The Associate Commissioner affirmed the director's denial on December 21, 2000. On June 7, 2001, the Associate Commissioner dismissed a subsequent motion. The matter is now again before the Associate Commissioner on a new motion. The motion will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5).

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.

As stated above, the Administrative Appeals Office (AAO) affirmed the director's denial in a decision dated December 21, 2000. On January 19, 2001, the Service received a Form I-290B and fee from an attorney who listed counsel as a member of his firm. The AAO dismissed the motion on June 7, 2001 as it did not constitute a proper motion to reopen or reconsider. Specifically, it was not accompanied by any evidence or arguments based on precedent decisions. Nor did that "motion" allege any errors in the AAO's decision. The AAO noted that a request for a motion must meet the regulatory requirements for a motion at the time of filing, no provision exists for the Service to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

On July 2, 2001, counsel submits a new motion to reopen which only addresses the merits of the underlying petition. The instant motion is a motion to reopen the AAO's June 7, 2001 decision. In order to constitute a proper motion, therefore, the instant motion must allege an error in that decision. As stated above, the June 7, 2001 decision dismissed the January 19, 2001 motion because it did not meet the regulatory requirements for a motion. In his current motion, counsel does not allege that the January 19, 2001 motion met the regulatory requirements for a motion or that the June 7, 2001 dismissal of that motion was in error. As such, the instant motion is also not a proper motion to reopen or consider the most recent decision in this case.

Order: The motion is dismissed.