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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: WAC-00-162-52464 Office: California Service Center Date: MAR 10 2003

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:

[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 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Elizabeth Hayward

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 in a ten-page decision dated August 3, 2002. Counsel asserts that the decision was not mailed until September 6, 2002 and submits the postmarked envelope in support of that assertion. On October 4, 2002, the Service received a letter and fee from counsel stating that the letter constituted his motion to reopen and reconsider.

In its decision, the AAO concluded that the petitioner had not submitted any evidence to support his claim to have received funds from his parents and the sale of his business in India, or that he leases a business in West Yorkshire, England. In addition, the AAO raised several specific concerns regarding the path of the allegedly invested funds, concluding that the petitioner had not established a personal investment. Finally, the AAO concluded that the petitioner had not established that the claimed employees worked directly for the new commercial enterprise or that they were new employees.

In support of the motion, counsel does not specifically address any of the above concerns. Rather, counsel states:

> The denial of [the petitioner's] application was based on the grounds that the petition failed to demonstrate his investment of lawfully obtained funds in an enterprise which created a minimum of ten full-time positions. The petitioner has in fact invested $1,076,034.00 since the formation of his partnership in 1994. The source of his funds invested has already been documented in previous responses. In addition, his investment has created more [than] the required 10 employees and documentation in the form of W-2 Wage and Tax Statements have been previously submitted.

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. 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 the Service to grant an extension in order to await future correspondence that may or may not include evidence or arguments.

ORDER: The motion is dismissed.