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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

SEP 29 2003

File: SRC 02 240 50457 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

[redacted]

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 CFR §103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be dismissed. The AAO's decision, dated January 24, 2003, will be affirmed.

The petitioner is a medical school. The beneficiary is a physician. The petitioner seeks a continuation of O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of one year as an assistant professor of surgery, and as the initial director of a new wound care, burn management, and trauma center.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary has sustained recognition as being one among a small percentage at the very top of the wound and burn care management field. On appeal, counsel for the petitioner submitted a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in his field. The AAO dismissed the appeal, finding that the petitioner had failed to establish that the beneficiary is an alien of O-1 caliber.

On motion, counsel for the petitioner submits a brief and states that additional documentation is forthcoming that merit reopening the decision. More than four months have elapsed since the date of the motion, and nothing more has been received into the record.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, appeal documents, and a motion to reopen and reconsider.

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. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and or evidence presented were unavailable at the time the prior decision was issued.

In review, the petitioner failed to state new facts.

8 C.F.R. § 103.5(a)(3) states, in pertinent part, that:

> 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 Bureau policy.

In review, the petitioner did not state any reasons for reconsideration supported by precedent decisions.

8 C.F.R. § 103.5(a)(4) states, in part, that "[a] motion that does not meet applicable requirements shall be dismissed." Inasmuch as the petitioner has failed to support the request for reopening or reconsideration, the motion must be dismissed.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion is dismissed.