U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 2 8 2014 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act , 8 U.S.C. § 11523(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center (the director), and the Administrative Appeals Office (AAO) summarily dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and motion to reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition remains denied.

The petitioner is a software development and consulting business. It seeks to employ the beneficiary permanently in the United States as a senior software engineer. As required by statute, the petition is accompanied by labor certification application approved by the United States Department of Labor (DOL). The petitioner requested classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The director determined that the beneficiary did not possess the minimum required education as stated on the labor certification. The director denied the petition accordingly.

The petitioner's former counsel filed the Form I-290B, Notice of Appeal or Motion on April 21, 2014 and indicated that a brief and/or additional evidence would be submitted within 30 days. Nothing further was received. On July 24, 2014, we summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v), as the appeal failed to identify specifically any erroneous conclusion of law or statement of fact.

The petitioner's current counsel filed the instant Motion to Reopen and Motion to Reconsider on August 25, 2015. Counsel states in his letter dated August 22, 2014 accompanying the Form I-290B that he is not submitting a brief in support of the motion at this time, but will submit a brief within 30 days.[1] On September 16, 2014, we received counsel's brief in support of the motion and the petitioner's 2013 Internal Revenue Service (IRS) U.S. Corporation Income Tax Return.

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a) provides, 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision."

A motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed. Nothing in the regulations permits the petitioner to submit evidence beyond the 30 day period allowed for motions to reopen. 8 C.F.R. § 103.5(a)(1)(i). In the instant case, the petitioner's motion, at the time it was filed on August 25, 2014, failed to state any new facts or reasons for reconsideration based on an incorrect application of law or Service policy. As we noted in our previous decision, the petitioner does not express disagreement with the director's decision, either on appeal or on motion.

[1] The filing does not state the basis for the motion, as required in Part 4 of the Form I-290B.

The director's decision denying the petition concluded that the beneficiary's Master of Science degree from was issued by an unaccredited institution.[2] The director determined that the petitioner had not established that the beneficiary met the minimum requirements for the job offered as stated on the labor certification, and that the beneficiary was qualified for classification as a member of the professions holding an advanced degree. The director noted in his decision that the petitioner did establish its ability to pay the proffered wage since the priority date.

Even considering counsel's brief received September 16, 2014 as a basis for the instant motion, the petitioner does not mention any new facts to be considered or provide any reasons for reconsideration of our previous decision. Counsel does not mention our decision summarily dismissing the appeal or address why the petitioner failed to provide the basis for the appeal.

Counsel asserts in the brief that the regulation at 8 C.F.R. § 214(g)(5)(C) is evidence of Congress' intent to consider the future accreditation of an institution. Counsel does not explain how the regulations governing the filing of non-immigrant H1B petitions apply to immigrant petitions. Counsel also asserts that "the second contention of the service pertains to the petitioner's ability to pay the proffered wages." However, as noted above, the director determined that the petitioner had established its ability to pay the proffered wage.

Counsel does not provide any affidavits or documentary evidence to establish any new facts, states no reason for the motion to reopen or reconsider and has not established that the decision was based on an incorrect application of law or Service policy based on the evidence of record at the time of the initial decision. Accordingly, the petitioner's motion to reopen and reconsider will be dismissed.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (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 movant has not met that burden. The motion to reopen will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motions will be dismissed, the proceedings will not be reopened or reconsidered and the previous decisions will not be disturbed.

ORDER: The motions are dismissed. The previous decisions of the director and the AAO are affirmed. The petition remains denied.

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[2] The director found that was not accredited by a U.S. Department of Education–recognized accreditor between 2005 and 2013. The beneficiary's Master of Science degree was conferred on August 31, 2009, at a time when was not accredited.