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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 24 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for [REDACTED] as an Other Worker Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition on May 18, 2007. The petitioner, through counsel, appealed this denial to the Administrative Appeals Office (AAO), and, on April 6, 2009, the AAO dismissed the appeal. Counsel then filed a motion to reopen the AAO's decision in accordance with 8 C.F.R. § 103.5. That motion was granted and on March 30, 2010, the AAO reaffirmed its previous dismissal of the appeal. On May 12, 2010, counsel filed a second motion to reopen. It will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii), and 8 C.F.R. § 103.5(a)(4).

United States Citizenship and Immigration Services (USCIS) regulations require that motions to reopen be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i) except that failure to timely file a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the affected party's control. *Id.* In this matter, the motion was filed on May 12, 2010, 43 days after the AAO's decision on counsel's previous motion. The record indicates that the AAO's decision was mailed to both the petitioner and to counsel of record. As the record indicates, the Form I-290B, Notice of Appeal or Motion was initially submitted unsigned and had been rejected by the Texas Service Center as improperly filed. *See* 8 C.F.R. § 103.5(a)(1)(iii)(A).¹ As the record of proceedings does not establish that the failure to file the motion within 30 days of the decision was reasonable and beyond the affected party's control, the motion is untimely and must be dismissed for that reason. 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(4).

Motions for the reopening or reconsideration 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 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. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.

¹ Further, the regulation at 8 C.F.R. § 103.2(a)(1) requires that every application, petition, appeal, motion or other document be filed in accordance with instructions and regulations. An application "which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed." Further, "rejected applications . . . will not retain a filing date." 8 C.F.R. § 103.2(a)(7)(i).