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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



U.S. Citizenship
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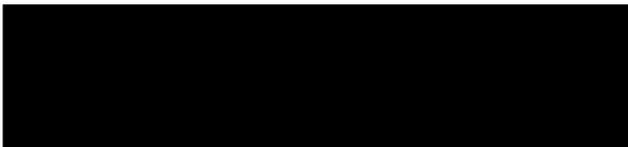
Date: **MAY 23 2011** Office: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



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 \$630. 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. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on April 6, 2009, the AAO dismissed the appeal. Counsel to the petitioner filed a motion to reopen the AAO's decision in accordance with 8 C.F.R. § 103.5 that was dismissed by the AAO on March 30, 2010. The petitioner filed another motion to reopen on May 12, 2010 that was dismissed by the AAO on September 24, 2010 as untimely filed. The petitioner has now filed a motion to reconsider. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(3), and 103.5(a)(4).

United States Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 103.5(a)(3) state, 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 Service policy. A motion to reconsider... must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision."

In this matter, counsel's assertions are not supported by pertinent precedent decisions sufficient to establish that the AAO's decision was based on an incorrect application of law or USCIS policy. Furthermore, the petitioner has failed to establish that the AAO's decision on motion was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).¹

The motion to reconsider does not qualify for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner's counsel's assertions are not persuasive in demonstrating that the director and the AAO made an erroneous decision through misapplication of law or policy. The motion must be dismissed. 8 C.F.R. § 103.5(a)(4).

Regardless, even if the AAO were to consider the petitioner's motion to reconsider, the petitioner has failed to demonstrate reasonable delay or circumstances beyond the affected party's control sufficient to sustain the petitioner's previous motion to reopen. USCIS regulations require that motions to reopen be filed within 30 days of the underlying decision, 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. 8 C.F.R. § 103.5(a)(1)(i). In this matter, the motion was filed on May 12, 2010, 43 days after the AAO's March 30, 2010 decision. The record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its counsel of record. On motion, counsel asserts that the failure to file the motion within 30 days of the AAO decision was reasonable in that the failure to provide a required signature was rectified and the motion was resubmitted only 13 days late. In addition, counsel asserts on motion

¹ Although the petitioner cites to *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1067), in the current Motion to Reconsider, the petitioner previously cited to this decision in its first Motion to Reopen filed on May 6, 2009, and the AAO fully addressed this precedent decision, and its applicability to the facts of this appeal, in both its decision dated March 30, 2010 and its original decision dated April 6, 2009. Counsel's citation to this decision yet again will not serve to support a Motion to Reconsider. Regardless, this precedent decision is not pertinent to whether the AAO erred in dismissing the petitioner's second motion as untimely, which is the issue now before the AAO.

that the delay was beyond the affected party's control in that it was counsel's signature that was missing that she was unable to expedite the return of the Form I-290B, but that she immediately resubmitted the motion once the notice was received. Based upon counsel's admission that the motion was filed late and the lack of a justifiable explanation for the late filing, the AAO's dismissal will be sustained.

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 or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.