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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

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 07 2010

IN RE: Petitioner: Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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 $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,

Mari Johnson

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant 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 a motion to reopen. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(A), 103.5(a)(1)(iii)(C), and 103.5(a)(4).

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states:

> (B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

The regulation at 8 C.F.R. § 103.5(a)(1) provides, in pertinent part:

> (iii) Filing Requirements – A motion shall be submitted on Form I-290B, and may be accompanied by a brief. It must be:
>
> > (A) In writing and signed by the affected party or the attorney or representative of record, if any;
> >
> > (B) Accompanied by a nonrefundable fee as set forth in § 103.7;
> >
> > (C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;
> >
> > (D) Addressed to the official having jurisdiction; and;
> >
> > (E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

Finally, with respect to a Form G-28, the regulation at 8 C.F.R. § 292.4(a) provides, in pertinent part:

> The form must be properly completed and signed by the petitioner, applicant or respondent to authorize representation in order for the appearance to be recognized by DHS.

The petitioner was represented by attorney Tina Diaz at the time of filing the petition and on appeal. The record contains a properly completed Form G-28, Notice of Entry of Appearance as Attorney or Representative, dated May 26, 2009. The Form G-28 is signed by both the alien petitioner and Ms. Diaz.

On June 25, 2010, attorney submitted a new Form I-290B, Notice of Appeal or Motion, identifying himself as the petitioner's attorney and bearing only signature. Part 1 of the Form I-290B specifically instructs the attorney or representative to "attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative." The Form G-28 submitted by . identifies himself rather than the alien as the "Petitioner" in Part 1 of the Form G-28. Further, Part 1 of the Form G-28 has not been signed by the alien petitioner. Thus, the Form G-28 submitted by is not valid. Accordingly, the motion has not been signed by the petitioner (the affected party in this proceeding) or by the petitioner's attorney or representative of record as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(A), and must be dismissed. Moreover, the motion does not contain the statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). For this additional reason, the motion must 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. *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 regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed.