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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
and Immigration
Services

DATE: FEB 18 2014 OFFICE: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: PETITIONER: [REDACTED]
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 (AAO) in your case.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on June 17, 2013. On November 12, 2013, the Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal on the basis that the petitioner did not identify any erroneous conclusion of law or statement of fact for the appeal. The matter is now before the AAO on a motion to reopen and reconsider, filed on November 26, 2013. The motion will be dismissed. The AAO's decision summarily dismissing the appeal will be affirmed, and the petition will remain denied.

I. Requirements of a Motion

The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) provides that a motion shall be submitted on Form I-290B and it must be "[a]ccompanied 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."

On motion, the petitioner has failed to submit a statement indicating if the validity of the AAO's November 12, 2013 unfavorable decision has been or is the subject of any judicial proceeding pursuant to the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the petitioner's motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4) without regard to the claims contained within the motion. Notwithstanding this omission, the motion does not meet the requirements for a motion to reopen or a motion to reconsider.

II. Motion to Reopen and Reconsider

A party seeking to reopen a proceeding bears a heavy burden and "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)(2). Based on its discretion, "the INS [now the U.S. Citizenship and Immigration Services (USCIS)] has some latitude in deciding when to reopen a case. [USCIS] should have the right to be restrictive. Granting such motions too freely will permit endless delay of deportation by aliens creative and fertile enough to continuously produce new and material facts sufficient to establish a *prima facie* case." *INS v. Abudu*, 485 U.S. 94, 108 (1988). The result also needlessly wastes the time and efforts of the triers of fact who must attend to the filing requests. *Id.*

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the original decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). In essence, a motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

On motion, the petitioner files a November 21, 2013 letter from [REDACTED] the founder and manager of the petitioner. According to the letter, on September 26, 2013, the petitioner mailed a letter to the AAO detailing the bases of its appeal. Notwithstanding that this letter postdates the

30-day period in which the petitioner indicated it would supplement the appeal, the petitioner has not provided any new evidence, such as affidavits, return receipts or other tracking information from the U.S. Postal Service or another mail delivery service, in support of the assertion. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Instead, on motion, the petitioner has re-submitted documents it previously filed in support of the petition and a letter it claims it submitted to supplement the appeal in September 2013, but the petitioner has not submitted new evidence to overcome the summary dismissal. In addition, the record of proceeding contains no evidence showing that USCIS received a letter or a statement detailing the bases of the appeal or documents in support of the petitioner's appeal in September 2013 or at any time prior to the submission of such documents with the instant motion. As such, the record lacks evidence showing that the petitioner filed any documents on appeal identifying an erroneous conclusion of law or statement of fact. Accordingly, the petitioner has not submitted new evidence that overcomes the summary dismissal the petitioner now seeks to reopen. *See* 8 C.F.R. § 103.5(a)(2).

The petitioner's motion to reconsider is also dismissed. Specifically, on motion the petitioner has not stated the reasons for reconsideration, or supported the reasons with pertinent precedent decisions showing that the AAO's November 12, 2013 decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). Indeed, other than noting in part 2 of the Form I-290B, filed on November 26, 2013, that the petitioner is filing a motion to reconsider, the petitioner does not state any bases for the motion to reconsider in its filing. The petitioner did not state the reasons for reconsideration and did not support the motion with any pertinent precedent decisions to establish that the summary dismissal was based on an incorrect application of law or USCIS policy. Thus, the filing does not meet the requirements of a motion to reconsider. 8 C.F.R. § 103.5(a)(3)

In conclusion, the motion to reopen and reconsider is dismissed because the petitioner has not submitted a statement regarding any judicial proceeding relating to the validity of the AAO's November 12, 2013 unfavorable decision and because the petitioner's filing does not meet the requirements of a motion to reopen or reconsider.

ORDER: The motion is dismissed, the decision of the AAO dated November 12, 2013 is affirmed, and the petition remains denied.