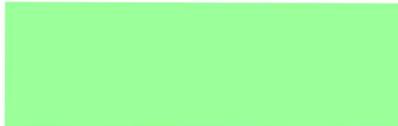




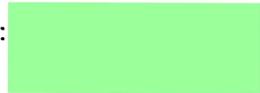
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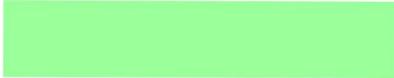


DATE: **JAN 05 2015** OFFICE: TEXAS SERVICE CENTER

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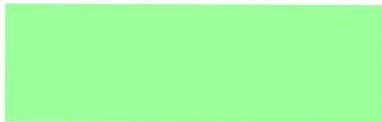


IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The petitioner subsequently filed an appeal with the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed as untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1) states that in order to properly file a motion to reopen or reconsider, the affected party must file the motion within 30 days of service of the decision the motion seeks to reconsider or reopen. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). With regard to the motion to reopen, an untimely filing may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the petitioner's control.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that we issued the decision on September 25, 2013. We properly gave notice to the petitioner that it had 33 days to file a motion. The motion in the present matter was received by USCIS on October 29, 2013, or 34 days after the decision was issued. Therefore, the motion was untimely filed. The petitioner neither claimed nor provided evidence to establish that delay in filing the motion beyond the permitted time period was reasonable and was beyond the petitioner's control. Therefore, the untimely filing of the motion cannot be excused and the motion must be dismissed. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

In addition, even if the petitioner provided sufficient evidence to establish sufficient cause to excuse the untimeliness of the motion, the motion would nevertheless be dismissed based on the petitioner's failure to establish that it meets the regulatory requirements for a motion to reopen or a motion to reconsider.

First, we turn to the regulations at 8 C.F.R. § 103.5(a)(2), which 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.

In the present matter, counsel's motion is not supported by new facts or evidence. Rather, counsel makes numerous to previously submitted documents that were previously reviewed during our adjudication of the petition on appeal.

Next turning to the motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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.

In the present matter, the only mention of precedent decisions are counsel's references to cases that were cited in our prior decision and the decision issued by the director. However, counsel does not establish that our dismissal of the petitioner's appeal is inconsistent with any of the previously cited cases. In fact, counsel's brief appears to be entirely focused on overcoming the previously cited grounds of ineligibility.

We note, however, that a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

In this case, counsel failed to support his motion with any precedent decisions or other comparable evidence to establish that the decision was based on an incorrect application of law or USCIS policy. The motion to reconsider will be dismissed.

Accordingly, not only must the motion be dismissed based on its untimely filing, but it must also be dismissed based on the petitioner's failure to meet the motion requirements. Therefore, the motion will be dismissed based on 8 C.F.R. § 103.5(a)(4), which states, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

ORDER: The motion is dismissed.