

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

B5

[REDACTED]

DATE: **OCT 22 2012** OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

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

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal from that decision. The matter is now before the AAO on a motion to reopen and to reconsider. The AAO will dismiss both motions.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician specializing in cardiology. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The AAO summarily dismissed the petitioner's appeal as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 103.3(a)(1)(v), which states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

It is significant that the present motion seeks to reopen and reconsider the AAO's summary dismissal, not the director's underlying decision. The AAO must view any submission on motion through this lens. The motion process does not provide the petitioner with indefinite opportunities to seek readjudication of the petition. Rather, it is a means to seek redress relating to the most recent decision.

In this instance, the petitioner, on motion, does not attempt to establish that the AAO's summary dismissal was based on an incorrect application of law or USCIS policy. The petitioner does not address the summary dismissal at all. Instead, the petitioner addresses the merits of the underlying petition. The opportunity for the petitioner to do so was on appeal. At that time, the petitioner, through counsel, presented only vague assertions that the petitioner had gained prominence in her field through unspecified achievements.

The petitioner submits documentation, including new scholarly publications and a letter of support from a professor at the University of Iowa, where the petitioner worked at the time she filed the petition. None of these materials, however, address the AAO's prior finding that the appeal lacked sufficient

substance. They establish that the petitioner remains active as a researcher, but the AAO made no finding to the contrary.

With respect to the petitioner's latest activities, these endeavors took place after the petition's filing date. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). Therefore, subsequent events cannot cause a previously ineligible alien to become eligible after the filing date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

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. The petitioner cannot meet this heavy burden simply by submitting evidence that, perhaps, should have accompanied the earlier appeal, but did not.

Because the petitioner did not show that the summary dismissal was the result of an error of law or fact, the AAO will dismiss the motion to reconsider. Likewise, because the petitioner's motion establishes no new facts relevant to the summary dismissal of the appeal, the AAO will dismiss the motion to reopen. The AAO summarily dismissed the petitioner's appeal, and the petitioner, on motion, fails to establish that the appeal was substantive, and that the AAO therefore should not have summarily dismissed that appeal.

ORDER: The motions to reopen and to reconsider are dismissed. The AAO's decision of April 5, 2012, is undisturbed.