



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JAN 29 2013** OFFICE: TEXAS 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

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. 8 C.F.R. § 103.3(a)(1)(v).

The petitioner filed the Form I-140 petition on January 20, 2012. The director denied the petition on August 17, 2012. The petitioner filed a motion to reopen and reconsider that decision on September 14, 2012. The director dismissed that motion on October 11, 2012, having concluded that the filing did not meet the regulatory requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2) or those of a motion to reconsider at 8 C.F.R. § 103.5(a)(3).

The AAO notes that, in the September 2012 motion, counsel stated: "If this Motion is denied, we ask that it be forwarded to the Administrative Appeals Office for further review and approval on appeal." While the USCIS regulation at 8 C.F.R. § 103.3(a)(2)(iii) provides that "the reviewing official may treat [an] appeal as a motion to reopen or reconsider and take favorable action," there exists no reciprocal provision permitting the reviewing official to treat a motion as an appeal and forward it to the AAO for adjudication.

The petitioner's appeal, filed October 29, 2012, is virtually identical to the motion filed previously. It contains the same evidentiary exhibits, and a brief from counsel that is almost exactly the same as the brief previously submitted on motion. The director already took that motion into consideration, and found it insufficient to warrant approval of the petition. The petitioner adds nothing of substance to the record by repeating the same claims on appeal. Because all of the appellate language existed prior to the denial notice, it identifies no specific error of fact or law in the denial notice. The petitioner adds no new claims or evidence to address the most recent decision, *i.e.*, the dismissal of the motion. The petitioner, instead, contests the director's first decision with no reference to the intervening motion and the director's dismissal thereof.

The matter on appeal is not the August 2012 denial of the petition, but the October 2012 dismissal of the motion to reopen and reconsider. The petitioner must overcome the October 2012 dismissal of the motion before the AAO will revisit the merits of any earlier decision. The present filing is not a timely appeal of the original denial decision, and the AAO will not treat it as though it were.

The petitioner, on appeal, makes no evident attempt to rebut or overcome the October 2012 dismissal of the motion. Instead, the petitioner essentially appeals the denial as though the motion and its dismissal never happened. Therefore, the petitioner has not shown that the AAO should withdraw the director's dismissal of the motion in order to clear the way for review of the underlying denial.

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Because counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact in the director's last decision, counsel has specified no acceptable basis for the appeal and the AAO must summarily dismiss the appeal.

ORDER: The appeal is dismissed.