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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: **JUL 02 2014** OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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:



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,

5 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to us at the Administrative Appeals Office, and we dismissed the petitioner's appeal. The petitioner then filed a motion to reopen and reconsider our decision. We granted the motion to reopen, dismissed the motion to reconsider, and affirmed the denial of the petition. The matter is now before us on a second motion to reopen and reconsider. We will dismiss the motions.

The petitioner seeks to classify the beneficiary under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences and business. The petitioner is a hospital that seeks to employ the beneficiary as a unit chief in the petitioner's psychiatric unit. 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 beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. In our subsequent dismissal orders, we found that the director had reached the correct conclusion.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on July 30, 2012. The director denied the petition on April 25, 2013, stating that the petitioner had not established the beneficiary's impact and influence on the field to qualify for the national interest waiver under *In re New York State Dep't of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). The petitioner appealed the denial on May 28, 2013, and we dismissed the appeal on October 21, 2013; the appellate decision contains further details regarding the proceeding. The petitioner filed its first motion to reopen and reconsider on November 25, 2013, and we affirmed our earlier decision on March 13, 2014. The petitioner filed the latest motion on April 21, 2014.

Any motion to reconsider an action by U.S. Citizenship and Immigration Services (USCIS) filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner did not file a timely motion. We issued our prior decision on Thursday, March 13, 2014, and served notice of the decision by mail that day. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b). Because we served our notice by mail, the petitioner had 33 days to file a timely motion. *Id.* The deadline for filing the motion was Tuesday, April 15, 2014. An official of the petitioning entity signed the Form I-290B, Notice of Appeal or Motion, on Wednesday, April 16, 2014, after the deadline had passed. The petitioner mailed the motion Thursday, April 17, 2014, and USCIS received it on Monday, April 21, 2014, 39 days after we issued our decision. The petitioner has not acknowledged the untimely filing or established that the delay was reasonable and beyond the petitioner's control. Therefore, the motion was untimely filed and, thus, shall be dismissed.

Apart from the untimely filing, the motion is not substantive. 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 USCIS 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).

In this instance, the motion does not meet any of the above requirements of a motion to reopen or a motion to reconsider. Part 4 of the Form I-290B instructed the petitioner: “On a separate sheet of paper, you must provide a statement providing the basis for the appeal or motion.” The form then quoted the regulatory definitions shown above. The petitioner, however, did not provide any such statement. The entire filing consisted of the Form I-290B and a photocopy of our March 13, 2014 decision.

The petitioner, on motion, states no new facts and submits no new evidence. Therefore, the motion does not meet the regulatory requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner does not state the reasons for reconsideration, cite any authority to establish that the decision was based on an incorrect application of law or USCIS policy, or establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion does not meet the regulatory requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Because the motion does not meet these requirements, the regulation at 8 C.F.R. § 103.5(a)(4) requires its dismissal.

The petitioner’s motion, filed April 21, 2014, is untimely and without substance, and we shall dismiss it for those reasons. Our decision of March 13, 2014 is undisturbed.

ORDER: The motion is dismissed.