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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



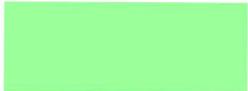
U.S. Citizenship
and Immigration
Services



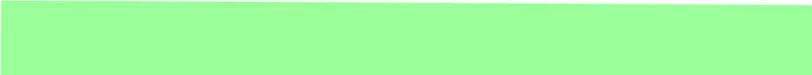
DATE: JUL 24 2014

OFFICE: TEXAS SERVICE CENTER

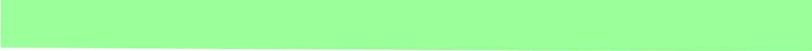
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IN RE: Petitioner:

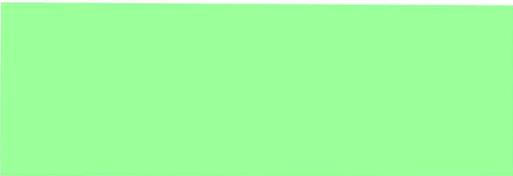


Beneficiary



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. § 11523(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 director), and the Administrative Appeals Office (AAO) rejected the subsequent appeal. The matter is now before the AAO on a motion to reopen and motion to reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition will be denied.

The petitioner is a medical business. It seeks to employ the beneficiary permanently in the United States as a medical research assistant. As required by statute, the petition is accompanied by labor certification application approved by the United States Department of Labor (DOL). The petitioner requested classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The director determined that the petitioner does not have the continuing ability to pay the proffered wage. The director denied the petition accordingly.

On appeal, counsel filed the Form I-290B, Notice of Appeal or Motion on behalf of the beneficiary. We found that the attorney who signed the Form I-290B did not represent an affected party in the appeal and rejected the appeal as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(i).¹

The regulations at 8 C.F.R. § 103.5(a)(2) 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." 8 C.F.R. § 103.5(a) provides, that "[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."

On motion, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a properly executed Form G-28 for the motion, a letter, an affidavit from the beneficiary denying any relationship to the owner of the petitioner, and copies of documentation already in the record. We find that the petitioner has not filed a proper motion to reopen. The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On July 15, 2013, we made a facsimile request for evidence (RFE) for a properly executed Form G-28 authorizing counsel to represent the petitioner on appeal. Counsel responded by submitting a Form G-28 signed by counsel and the beneficiary. On January 2, 2014, we mailed a second RFE requesting a properly executed Form G-28 for the appeal.² To which counsel submitted another Form G-28 signed by the beneficiary. As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that

¹ While the record did not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative, authorizing counsel to file an appeal, on motion counsel has submitted a properly executed Form G-28 authorizing counsel to represent the petitioner on motion.

² Both RFEs specifically requested a Form G-28 signed by counsel and the petitioner, authorizing representation for the appeal.

deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

On motion, counsel mentions our decision of February 4, 2014, which rejected the appeal as improperly filed and states that a properly executed Form G-28 is submitted on motion. However, no allegation of error in the February 4, 2014 decision is stated with the current motion. Counsel states no reason for the motion to reconsider and has not established that the decision was based on an incorrect application of law or Service policy based on the evidence of record at the time of the initial decision. Accordingly, the petitioner's motion to reopen and reconsider will be dismissed.

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. *See 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. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed. The petition remains denied.