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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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BC

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAY 15 2009

WAC 99 225 53778 (Petition)
WAC 07 032 52784 (Motion)

IN RE:

Petitioner:
Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on January 28, 2002, the AAO dismissed the appeal. Counsel to the petitioner filed a Motion to Reopen/Reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. On January 23, 2003, the AAO granted the motion to reopen and affirmed its previous decision. On February 27, 2003, counsel to the petitioner filed a Motion to Reopen/Reconsider the AAO's decision of January 23, 2003 in accordance with 8 C.F.R. § 103.5. The Motion is being contemporaneously dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(2), 103.5(a)(3), and 103.5(a)(4). On November 16, 2006, counsel submitted a letter to U.S. Citizenship and Immigration Services (USCIS) inquiring as to the status of the February 27, 2003 motion. The California Service Center recorded this letter as a motion (WAC 07 032 52784) and forwarded it to the AAO for consideration. To the extent that this letter is a motion, it will be dismissed for the same reasons as the February 27, 2003 motion (WAC 03 114 50380).

USCIS regulations require that motions to reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). Similarly, USCIS regulations require that motions to reopen be filed within 30 days of the underlying decision, except that failure to timely file a motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the affected party's control. *Id.* In this matter, the motion was filed on November 16, 2006, 1393 days after the AAO's January 23, 2003 decision. The record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its counsel of record. As the record does not establish that the failure to file the motion within 30 days of the decision was reasonable and beyond the affected party's control, the motion is untimely and must be dismissed for that reason.

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Finally, upon review, the AAO will dismiss the motion for failure to meet the applicable requirements for motions to reopen set forth in 8 C.F.R. § 103.5(a)(2) and motions to reconsider set forth in 8 C.F.R. § 103.5(a)(3).

This regulation at 8 C.F.R. § 103.5(a)(2) states 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 this matter, the petitioner offers no new evidence. Accordingly, the motion does not meet applicable requirements and must be dismissed. 8 C.F.R. § 103.5(a)(4).

Likewise, this regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part, 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 [USCIS] policy." In this matter, counsel simply states that he wants a previously filed Motion to Reopen (Receipt No. WAC 03 114 50380) to be "processed and adjudicated on its merits without further delay." This assertion fails to satisfy the requirements set forth in the regulations for motions to reconsider. As such, the motion does not meet the applicable requirements and must be dismissed. 8 C.F.R. § 103.5(a)(4).

Motions for the reopening or reconsideration 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 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. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.