

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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



206

FILE:

Office: NEBRASKA SERVICE CENTER

Date:
FEB 28 2011

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



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, Nebraska Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on September 13, 2010, the AAO rejected the appeal. Counsel to the petitioner filed a motion to reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(C), 103.5(a)(3), and 103.5(a)(4).

The motion to reconsider fails to meet the applicable requirements set forth in 8 C.F.R. § 103.5(a)(3). The regulations at 8 C.F.R. § 103.5(a)(3) state, 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 [U.S. Citizenship and Immigration Services (USCIS)] policy." In this matter, the petitioner does not allege any incorrect application of law or USCIS policy and does not cite any pertinent precedent decisions.

The Nebraska Service Center denied the petition on August 29, 2008. Although the Service Center received the appeal on September 29, 2008, the appeal did not have the proper fee with it. The numerical amount on the check differed from the written amount on the check, and the check therefore could not be negotiated. As already stated in the prior AAO decision, according to the regulation at 8 C.F.R. § 103.2(a)(7)(i), a filing without an appropriate fee, or one in which the check used to pay the filing fee is subsequently returned as non-payable, will not retain a receipt date. The Service Center returned the appeal to the petitioner who, in turn, filed with it the proper filing fee on October 9, 2008, 41 days after the decision was issued. The AAO was required to reject this appeal as untimely. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Counsel in her motion asserts that the date when USCIS posted the petitioner's check was within the control of USCIS even though counsel recognizes that the check was improperly drafted and non-negotiable. In defense to the manner in which the check to USCIS was prepared, counsel states ambiguously, "[T]he figures and the words of the filing fee when read together would read the same. The swirls or stokes of pen that may seem to inadvertently cause double spelling of a letter should not be interpreted adversely against the petitioner particularly when it is very clear from the reading of the words and figures that the same amount is intended and when read together, the same phonetic sound of the word and figure are same." Counsel's logic is not apparent. As noted above, the appeal did not include a filing fee when it was first received by the Service Center on September 29, 2008. Under the regulations, this attempted filing did not retain a receipt date. Accordingly, it was untimely when it was finally received with the correct fee on October 9, 2008, and the AAO was required to reject the appeal.

The motion shall be dismissed for this reason.

The motion shall also 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 additional reason.

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.