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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: **APR 10 2012** Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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)

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The petitioner filed a motion to reopen and reconsider the AAO's decision. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(3), and 103.5(a)(4).

The director denied the petition on November 17, 2006. The decision concluded that that petitioner failed to establish its ability to pay the proffered wage pursuant to 8 C.F.R. § 204.5(g)(2). The petitioner appealed the decision to the AAO on December 20, 2006. The Form I-290B, Notice of Appeal or Motion, stated that counsel would send "a brief and/or evidence to the AAO within 30 days." On April 7, 2009, the AAO dismissed the appeal. The AAO decision states that counsel failed to submit any brief or evidence, and dismissed the appeal for failure to identify specifically an erroneous conclusion of law or statement of fact for the appeal. See 8 C.F.R. § 103.3(a)(1)(v). The decision informed the petitioner that any motion to reconsider or reopen the AAO decision must be filed within 30 days with the office that originally decided the case. In this case, the office that originally decided the case is the Texas Service Center.

Counsel attempted to file a motion to reopen and reconsider the AAO decision with the Nebraska Service Center on May 4, 2009. The motion was returned to counsel because he attempted to file the motion with the incorrect office. Counsel then filed the motion with the Texas Service Center on May 13, 2009, 36 days after the AAO's April 7, 2009 decision. On motion, counsel claims that he did submit a brief and evidence within 30 days of filing the appeal.

United States Citizenship and Immigration Services (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.*

The requirements for filing a motion to reopen or reconsider at 8 C.F.R. §§ 103.5(a)(1)(iii)(D) and (E) requires;

A motion shall be submitted on Form I-290B and may be accompanied by a brief. It must be addressed to the official having jurisdiction; and submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

Counsel offers that due to a clerical error, the motion was initially sent to the wrong address which resulted in the delay that he seeks to have forgiven.

In this case, the motion is late because it was initially submitted to an office that did not issue the unfavorable decision and did not have jurisdiction. 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. Therefore, the motion is untimely and must be dismissed.

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.

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 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.