



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: OFFICE: NEBRASKA SERVICE CENTER FILE:

APR 08 2013

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)

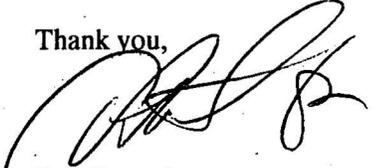
ON BEHALF OF PETITIONER:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Ron Rosenberg  
Acting 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 June 1, 2012, the AAO dismissed 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)(i), 103.5(a)(1)(iii)(C), 103.5(a)(3), and 103.5(a)(4).

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 record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its counsel of record. Further, 8 C.F.R. § 103.2(a)(6) requires that an application or petition be filed as indicated in the instructions on the respective form. The instructions included with the AAO decision stated, "[a]ll 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."

In this matter, the motion was not filed in accordance with 8 C.F.R. §103.5. Specifically, counsel mailed the motion directly to the AAO on June 29, 2012, instead of properly submitting the motion to the office that originally decided the case. The AAO rejected and returned the motion to the petitioner on July 2, 2012. Counsel then filed the motion with the proper office on July 9, 2012, 38 days after the AAO's decision.<sup>1</sup>

As the record does not establish that the failure to properly 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.<sup>2</sup>

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

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<sup>1</sup> See 8 C.F.R. § 103.2(a)(7)(iii) Rejected benefit requests. A benefit which is rejected will not retain a filing date.

<sup>2</sup> Even if the appeal were timely filed, neither the documents submitted on appeal, nor any evidence in the record of proceeding would overcome the bases for the dismissal: (1) that the evidence submitted does not establish that the petition requires at least two years of training or experience such that the beneficiary may be found qualified for classification as a skilled worker or that the labor certification supports a filing under the skilled worker category; and (2) that the evidence submitted does not establish that the beneficiary possessed the required experience set forth on the labor certification by the priority date and therefore, that the petitioner has failed to establish that the beneficiary is qualified for the offered position.

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 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.