



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 16 2013

OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Skilled 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 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 with the field office or service center that originally decided your case by filing a 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The AAO summarily dismissed the petitioner's appeal. The matter is now before the Administrative Appeals Office (AAO) on appeal. The motion will also be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. The director denied the petition after determining that the petitioner failed to demonstrate that it had the continuing financial ability to pay the proffered wage.

On appeal, counsel merely stated that the director erred in this determination and stated that a brief and/or additional evidence would be submitted to the AAO within 30 days. Counsel dated the appeal October 8, 2011. The AAO's decision, rendered on November 3, 2012, noted that:

As of this date, more than 12 months later, the AAO has received nothing further, and the regulation requires that any brief shall be submitted directly to the AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii).

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel here has not specifically addressed and no additional evidence has been submitted. The appeal must therefore be summarily dismissed.

Through counsel, the petitioner submits a motion to reopen and a motion to reconsider the AAO's decision of November 3, 2012. The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must offer the reasons for reconsideration and be supported by pertinent legal authority showing that the decision was based on an incorrect application of law or USCIS policy. It must also demonstrate that the decision was incorrect based on the evidence contained in the record at the time of the initial decision. A motion to reopen must state the new facts to be submitted in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

The motion does not address the merits of the AAO's decision of November 3, 2012, summarily dismissing the appeal, but attempts to argue the merits of the petitioner's underlying visa petition and the director's decision denying the petition based on the failure of the petitioner to establish its continuing ability to pay the proffered wage. The motion is not accompanied by any affidavits or other documentary evidence and does not qualify as a motion to reopen. Further, it is not supported by pertinent legal authority or shows that the AAO's decision of November 3, 2012 was based on an incorrect application of law or USCIS policy.

ORDER: The motion to reopen and motion to reconsider is dismissed.