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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: **AUG 20 2013**

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

*Elizabeth McCormack*

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** On October 26, 2005, United States Citizenship and Immigration Services (USCIS), Vermont Service Center (VSC), received an Immigrant Petition for Alien Worker, Form I-140, from the petitioner. The director of the Texas Service Center (the director) denied the immigrant petition on December 23, 2009, and the petitioner subsequently appealed the director's decision. On January 22, 2013, 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 petitioner, a dry cleaner, seeks to employ the beneficiary permanently in the United States as an assistant manager. As required by statute, an ETA Form 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to follow the U.S. Department of Labor (DOL) recruitment procedures in connection with the approved labor certification application and that the petitioner failed to demonstrate that the beneficiary had the required experience as of the priority date. On appeal, the AAO raised an additional issue concerning the petitioner's ability to pay the proffered wage. As indicated above, the AAO dismissed the subsequently filed appeal of the director's decision on December 17, 2002, and a motion to reconsider the AAO's decision was filed on January 22, 2013.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states in pertinent part that:

Any motion to reconsider an action by [U.S. Citizenship and Immigration Services (USCIS)] filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider.

In this matter, the instant motion was filed on January 22, 2013, or 36 days after the decision of the AAO. Therefore, the motion was untimely and must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

In addition, the motion shall be dismissed for failing to meet one other applicable requirement set forth in 8 C.F.R. § 103.5(a)(2) and (3). The regulation at 8 C.F.R. § 103.5(a)(2) requires motion to reopen to provide new facts and be supported by affidavits or other documentary evidence. The regulations at 8 C.F.R. § 103.5(a)(3) require motions to reconsider to "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 did not support its motion with any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or policy nor were any affidavits or documentary evidence submitted. For this reason, the motion must also be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) as the motion fails to meet applicable requirements.<sup>1</sup>

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<sup>1</sup> The Brief submitted by counsel states that the petitioner's previous counsel mishandled the instant case and that the petitioner should be given the opportunity to renew/refile the labor certification and Form I-140 petition. The petitioner, through counsel, failed to provide evidence, argument, or other

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.

Finally, it should be noted for the record that, unless USCIS directs otherwise, the filing of a motion to reopen does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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.

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documentation to establish that the beneficiary is qualified for the position or that the petitioner has the ability to pay the proffered wage in this case.