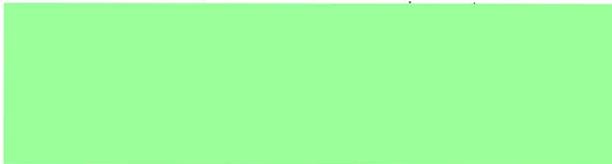




U.S. Citizenship
and Immigration
Services

(b)(6)



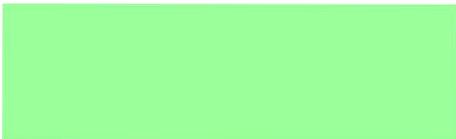
DATE: **FEB 05 2013** Office: NEBRASKA SERVICE CENTER

FILE:

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 preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director determined the petitioner had not established it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on May 14, 2010, the AAO dismissed the appeal. The petitioner filed a motion to reconsider the AAO's decision. The motion will be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

First, the motion shall be dismissed for failing to meet one of the applicable requirements listed in 8 C.F.R. § 103.5(a)(1)(iii), which sets forth 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 be dismissed for this reason.

Second, the motion shall be dismissed because it does not meet the substantive requirements of a motion to reconsider. The regulations require motions to reconsider state the reasons for reconsideration and be supported by pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). In this matter, the petitioner does not cite to any law or policy which the AAO's decision violates. Although the petitioner submits evidence in support of its claim that the petitioner can establish its continuing ability to pay the wage based on a consideration of the totality of the circumstances, the petitioner did not file a motion to reopen. It filed a motion to reconsider. A motion to reconsider must establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* The motion does not meet the requirements and must be dismissed for this reason. *Id.*; 8 C.F.R. § 103.5(a)(4).

Motions for the reopening 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. *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.

Finally, it should be noted for the record that, unless U.S. Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen or reconsider 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).

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.

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Title 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.