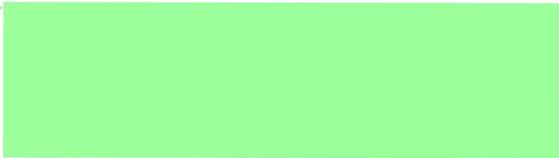


(b)(6)

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



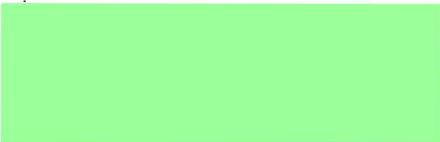
Date: **FEB 28 2013** Office: NEBRASKA SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or a 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petitioner filed an appeal, which was dismissed by the Chief, Administrative Appeals Office (AAO). The case is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a medical office owned and operated by [REDACTED]. The petitioner seeks to employ the beneficiary permanently in the United States as a medical and health services manager pursuant to section 203(b)(3)(A)(ii) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1153(b)(A)(ii).

The Director denied the petition on the grounds that the petitioner failed to establish (1) its ability to pay the proffered wage and (2) that the beneficiary meets the work experience requirement of the labor certification.

On appeal the AAO determined that the petitioner had established its ability to pay the proffered wage and withdrew the Director's finding on that issue. However, the AAO also determined that the petitioner had failed to establish that the beneficiary satisfied the experience requirement for the job under the terms of the labor certification. The AAO dismissed the appeal on this ground in a decision dated January 13, 2012.

On February 16, 2012, the Nebraska Service center received a Form I-290B, Notice of Appeal or Motion, from counsel for the petitioner. On the Form I-290B counsel stated as follows: "We believe that erroneous conclusions were applied and will provide a brief to AAO within 30 days." No such brief was filed in the next 30 days, however, or at any time since.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that motions to reopen or reconsider must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. This time limit and the applicable regulation were cited by the AAO on the cover page of its decision dismissing the appeal. The regulation at 8 C.F.R. § 103.8(b) afforded the petitioner an additional 3 days to file a motion because he received the AAO's decision by mail. Thus, the petitioner had 33 days from the date of the decision – until February 15, 2012 – to file a motion. In this case, however, the petitioner's motion was not filed with the Nebraska Service Center until February 16, 2012. Therefore, it did not meet the filing deadline.

As prescribed in 8 C.F.R. § 103.5(a)(4): "A motion that does not meet applicable requirements shall be dismissed." Accordingly, since it failed to meet the filing deadline the petitioner's motion must be dismissed.

Even if the motion had been timely filed, it would not warrant favorable action by the AAO. The requirements for a motion to reopen are set forth in the regulation at 8 C.F.R. § 103.5(a)(2):

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The requirements for a motion to reconsider are set forth at 8 C.F.R. § 103.5(a)(3):

A motion to reconsider must 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 [U.S. Citizenship and Immigration Services (USCIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner has presented no new facts or documentation, as required in a motion to reopen, to refute the AAO's prior determination that the beneficiary does not have the requisite experience under the terms of the labor certification to qualify for the proffered position. Furthermore, the petitioner has not presented any persuasive argument and/or pertinent precedent decisions showing that the AAO's decision was based on an incorrect application of law or USCIS policy, as required in a motion to reconsider. Thus, the pending motion does not meet the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2) or a motion to reconsider under 8 C.F.R. § 103.5(a)(3).

For this additional reason, therefore, the motion must be dismissed under 8 C.F.R. § 103.5(a)(4) for failure to meet applicable requirements.

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.

ORDER: The petitioner's motion is dismissed. The AAO's decision of January 13, 2012, dismissing the appeal, is affirmed.