



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

OFFICE: TEXAS SERVICE CENTER

FILE:

JAN 24 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:

SELF-REPRESENTED

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, Texas Service Center, denied the immigrant visa petition on February 1, 2008. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on March 15, 2010, the AAO dismissed the appeal. The petitioner filed a motion to reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5 on December 27, 2011. 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). While the petitioner had notice of this regulation through its publication, the petitioner was also informed of the 30-day deadline on the instructions accompanying the AAO's March 15, 2010, denial. The AAO's denial succinctly informed the petitioner and counsel¹ of this 30 day deadline, stating, "[a]ny motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i)." Thus, the AAO's decision provided the precise period permitted for a motion, 30 days, as well as reference to the applicable regulation. In this matter, the motion was filed on December 27, 2011,² which is 652 days (1 year, 9 months, 12 days) after the AAO's March 15, 2010 decision. The record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its counsel of record. The petitioner has not indicated any issue with its receipt of the AAO's decision, and the petitioner's motion includes a copy of the AAO's decision, evidencing that it was received by the petitioner. Therefore, while the petitioner and its counsel of record received the AAO's decision, the petitioner did not file a motion during the regulatory

¹ The AAO notes that the instant Form I-290B, Notice of Appeal or Motion, Part 1, lists an attorney from the law firm of [REDACTED] Associates. The attorney checked the box stating, "I am an attorney or representative." However, the record does not contain documentation evidencing this attorney's representation of the petitioner. As noted herein, this motion comes more than a year and nine months after the last action in this case; prior to this motion, the petitioner was represented by different counsel (referred to herein as counsel of record). While the attorney indicated on this motion appears to have represented the beneficiary in other immigration matters, the attorney has not documented that he represents the petitioner in this matter. The motion is accompanied by two Forms G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, however, both Forms G-28 are signed by the beneficiary only. The record does not contain a new, or any, properly executed Form G-28 signed by this attorney and the petitioner. In accordance with the regulation at 8 C.F.R. § 292.4(a), as well as the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all motions filed on or after March 4, 2010. See 75 Fed. Reg. 5225 (Feb. 2, 2010). Without a new, properly executed Form G-28 authorizing this attorney to represent the petitioner, the AAO need not consider the motion to have been properly filed. 8 C.F.R. § 103.3(a)(2)(v)(A). Therefore, even if this motion had been filed within the required 30 days, instead of more than 21 months after the AAO's decision, the motion could be rejected as improperly filed. *Id.*

² On December 16, 2011, the AAO rejected an improperly filed Form I-290B associated with this matter, as it was filed directly with the AAO, rather than with the Texas Service Center pursuant to regulation and the AAO's previous instructions to the petitioner. The AAO's prior decision properly informed the petitioner that "[a]ll documents have been returned to the office that originally decided your case ... you may file a motion to reconsider or a motion to reopen ... [a]ll motions must be submitted to the office that originally decided your case."

prescribed time period, 30 days, but rather waited for more than a year and nine months to file its motion. This motion, received more than a year and nine months after the AAO's decision, cannot be considered to be timely.

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. 8 C.F.R. § 103.5(a)(1)(i). The petitioner's motion was accompanied by a 14 page brief. While the brief accompanying this motion acknowledges the date of the director's initial decision, February 1, 2008, and the date of the AAO's subsequent decision, March 15, 2010, neither Form I-290B nor the accompanying brief state any explanation for the petitioner's failure to file the motion within the 30 day period provided. The brief does not request the AAO exercise discretion pursuant to 8 C.F.R. § 103.5(a)(1)(i). While the petitioner provided additional evidence with its motion, the petitioner did not state that it was unable to obtain the evidence within the 30 day time period provided; further, the evidence provided either was previously submitted or could have been obtained within the 30 day time period following the AAO's decision. While the AAO may excuse late filings when the petitioner has demonstrated that the delay was reasonable and beyond its control, such discretion is not warranted when the petitioner's motion was filed approximately two years after the AAO's decision, the petitioner has not stated any reason for the delay, and the petitioner has not requested or explained why the AAO should exercise its discretion to accept this filing approximately two years after the AAO's prior decision. As the record does not establish that the failure to 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.

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 of any judicial proceeding." In this matter, the motion does not contain the required statement. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Further, with its motion the petitioner has provided an affidavit, dated December 2, 2011, which appears to have been filed in a judicial proceeding regarding this matter before the U.S. District Court for the Western District of Texas. Therefore, because the instant motion does 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

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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.