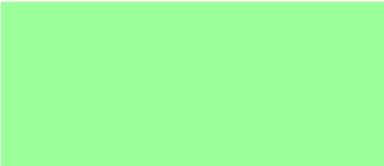


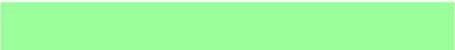


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUL 12 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:

SELF-REPRESENTED

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on July 19, 2010 the AAO dismissed the appeal. Counsel to the petitioner filed a motion to reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5, and on January 4, 2013, the AAO granted this motion and ultimately upheld the director's denial of the petition. The petitioner has filed a motion<sup>1</sup> this decision to the AAO. The motion will be dismissed as being untimely filed.

The petitioner must file an appeal or motion on an unfavorable decision within 30 days of service. 8 C.F.R. § 103.3(a)(2)(i). If the unfavorable decision was mailed, the appeal or motion must be filed within 33 days. 8 C.F.R. § 103.8(b). An untimely motion must be rejected as improperly filed. Neither the Act nor the regulations grant the AAO authority to extend this time limit.

The filing date is the actual date of receipt at the location designated for filing. 8 C.F.R. § 103.2(a)(7)(i). The motion must be signed and submitted with the correct fee to the correct filing location.<sup>2</sup> *Id.* The regulation at 8 C.F.R. § 103.5(a)(1)(iii) state that "a motion shall be submitted on Form I-290B and may be accompanied by a brief." The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that "[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." Counsel submitted a brief and additional evidence on June 12, 2013. There are no provisions in the regulations that allow additional evidence to be submitted untimely in support of a motion to reopen.

On January 4, 2013, the AAO issued its decision to both the petitioner and counsel of record upholding the director's denial of the petition. The AAO properly gave notice to the petitioner that it had 33 days to file a motion to reconsider or a motion to reconsider, and properly notified the petitioner not to file a motion directly with the AAO. The petitioner filed the Form I-290B, Notice of Appeal or Motion, on February 14, 2013, or 41 days after the decision was issued. Accordingly, the motion is untimely.

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<sup>1</sup> On the Form I-290B submitted on May 8, 2012, the petitioner checked Box B, which states "I am filing an appeal," however, the accompanying narrative states that "additional evidence [was submitted] in support of a motion to reopen." It is noted that the AAO does not exercise appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1 (effective March 1, 2003). An appeal of an AAO appeal is not properly within the AAO's jurisdiction. However, because the petitioner characterized its filing as a motion to reopen on the Form I-290B it will be accepted as one despite the incorrect box being checked on the form.

<sup>2</sup> The record reflects that the petitioner initially submitted the Form I-290B, Notice of Appeal or Motion, directly to the AAO on February 8, 2013, but this was returned to the petitioner because it was improperly submitted directly to the AAO. The AAO's January 4, 2013 decision notified the petitioner, "Do not file any motion directly with the AAO." The petitioner then filed the appeal on February 14, 2013. Even if the AAO could have accepted the February 8, 2013 filing date, this still would have been 35 days after the decision was issued and would have been considered untimely filed.

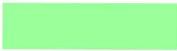
In addition, the instant motion, if timely, may be rejected as improperly filed. Form I-290B was signed by counsel as the petitioner's attorney. The record, however, does not contain a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by both counsel and the petitioner. In accordance with the U.S. Citizenship and Immigration Services (USCIS) 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 [AAO]." This regulation applies to all appeals filed on or after March 4, 2010. See 75 Fed. Reg. 5225 (Feb. 2, 2010). Concurrently with Form I-290N, counsel submitted a Form G-28 signed by counsel and the beneficiary. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. Counsel also submitted a photocopy of a Form G-28 previously submitted with a prior filing, which was signed by the petitioner on July 30, 2012, predating the AAO's January 4, 2013, decision. On May 16, 2013, the AAO notified the counsel by facsimile that the record does not contain a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, signed by both the petitioner and counsel. Counsel did not submit a duly executed Form G-28 in response. To date, counsel failed to submit this required document; therefore, the instant motion may also be rejected as improperly filed, under the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

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 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 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.

In accordance with the U.S. Citizenship and Immigration Services (USCIS) 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 appeals filed on or after March 4, 2010. See 75 Fed. Reg. 5225 (Feb. 2, 2010). There is no evidence in the record that the petitioner consented to the filing of the appeal by filing a new, properly executed Form G-28 using the correct form.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128



(BIA 2013). The petitioner has not sustained that burden. 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.

The motion must be dismissed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1) for being untimely filed. Even if the motion had not been late, the motion would be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(1) for not being filed with a properly executed Form G-28.

**ORDER:** The appeal is dismissed.