

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

(b)(6)



DATE: **JUL 12 2013** OFFICE: TEXAS 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,

Rachel DiToro
for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal, as well as multiple motions to reopen and motions to reconsider filed by the petitioner. The matter is again before the AAO as a motion to reopen and a motion to reconsider. The motion to reopen and motion to reconsider will be dismissed. The previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner is a tile/marble installation company. It seeks to permanently employ the beneficiary in the United States as a tile setter pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3).

The director determined that the petitioner had failed to establish its ability to pay the beneficiary the proffered wage and, further, that it had not demonstrated that the beneficiary possessed the minimum work experience required by the labor certification. The AAO summarily dismissed the petitioner's appeal, filed July 1, 2008, pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v) as it failed to identify specifically any erroneous conclusion of law or statement of fact. The AAO affirmed its summary dismissal of the appeal in response to a motion to reopen and a motion to reconsider filed by the petitioner on May 11, 2009 and, thereafter, dismissed the petitioner's second motion to reopen and motion to reconsider based on their untimely filing. On October 3, 2011, the petitioner filed a third motion to reopen and motion to reconsider, which the AAO dismissed on February 5, 2013, determining that the petitioner did not meet the regulatory requirements for a motion to reopen or a motion to reconsider.

On March 7, 2013, the petitioner submitted a motion to reopen and a motion to reconsider the AAO's decision of February 5, 2013.¹

The requirements for motions to reopen and reconsider are found at 8 C.F.R. §§ 103.5(a)(2) and (3):

¹ On motion, the Form I-290B, Notice of Appeal or Motion, was signed by counsel and submitted with a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, signed by the beneficiary, who is not an affected party, i.e., a person with legal standing, in this matter. 8 C.F.R. § 103.5(a)(i). Therefore, on June 18, 2013, the AAO contacted counsel and requested a Form G-28 signed by the petitioner. On July 2, 2013, counsel submitted a Form G-28, dated March 6, 2013, with a signature that appears to be different from that of [REDACTED] the petitioner's president, who previously signed Forms G-28s authorizing counsel's representation. The signature on the new Form G-28 is illegible and the identity of the person who signed it is not apparent from the record. Therefore, it is not clear that the petitioner authorized counsel to file the instant motion to reopen and motion to reconsider. The AAO will provide the petitioner with a copy of this decision, although it will be considered self-represented in light of the unidentified signature on the Form G-28.

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence . . .

(3) *Requirements for motion to reconsider.* 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 Service 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 record reflects that the motion to reopen and the motion to reconsider are timely. However, in Part 3 of the Form I-290B, the petitioner indicates only that a statement will be submitted in support of the motion to reopen and the motion to reconsider within 30 days, which the AAO has not yet received. The Form I-290B does not, as required by 8 C.F.R. § 103.5(a)(2), state new facts to be proved and is not accompanied by supporting affidavits or other evidence. Neither does the Form I-290B indicate the reasons for reconsideration, support these reasons with relevant precedent decisions or establish that the AAO's prior decision was incorrect, as required by the regulation at 8 C.F.R. § 103.5(a)(3). Accordingly, the AAO finds neither the petitioner's motion to reopen nor its motion to reconsider to be properly filed.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion that does not meet regulatory requirements must be dismissed. As the instant motions do not meet the applicable filing requirements listed in 8 C.F.R. §§ 103.5(a)(2) and (a)(3), they must be dismissed.

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 motions 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 motions are dismissed.