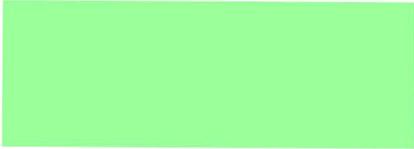




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUN 05 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:



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, revoked the approval of the petitioner's immigrant visa petition. The petitioner appealed this decision to the Administrative Appeals Office (AAO), and, on September 5, 2012, the AAO dismissed the appeal. Counsel to the petitioner filed an appeal of the AAO's decision. The appeal will be dismissed pursuant to 8 C.F.R. §§ 103.3(a)(1)(ii), 103.5(a)(1)(i), 103.5(a)(3), and 103.5(a)(4).

United States Citizenship and Immigration Services (USCIS) regulations provide for appeals of unfavorable decisions. See 8 C.F.R. §§ 103.3(a)(1)(ii), 103.3(a)(1)(iv) (defining the jurisdiction of the Board of Immigrations Appeals and the AAO, respectively). 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.

USCIS regulations permit a petitioner to request that a decision by the AAO be reopened and reconsidered. 8 C.F.R. § 103.5(a). Motions to reopen or reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). The petitioner's brief and any evidence must be filed within 30 days of the underlying decision. *Id.* There is no provision in the statute or regulations permitting the AAO to extend that deadline. *Cf.* 8 C.F.R. § 103.3(a)(2)(vii) (permitting the AAO to allow, for good cause shown, additional time to submit a brief).

In this matter, the AAO dismissed the petitioner's appeal on September 5, 2012. On October 4, 2012, the petitioner submitted Form I-290B, Notice of Appeal or Motion, noting that it was "filing an appeal" by checking box "B" in Part 2 of that form. Page 2 of the Form is titled as "Appeal for [the beneficiary]." Part 3 of the form, "Basis for the Appeal or Motion," contains only one sentence, which reads, "[t]he brief and supporting documents will be submitted to the AAO within the next 30 days." The form is signed by the petitioner's president. Form I-290B was accompanied by a Form G-28, Notice of Entry of Appearance as Attorney, as well as a letter from counsel, dated October 3, 2012. Counsel's letter states in pertinent part:

The Texas Service [C]enter initially revoked the I-140 petition on 05/13/2010. Subsequently an appeal was filed on 06/01/2010. Recently, on 09/05/2012, the AAO dismissed the appeal and affirmed the revocation of the approved petition. At this time we are submitting a request to appeal the decision once again. ... We are now submitting our request for an appeal and the supporting documents will be submitted to the AAO within 30 days.

On November 5, 2012, 61 days after the AAO's decision, counsel for the petitioner submitted its brief and supporting documents.<sup>1</sup>

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<sup>1</sup> In its appeal, the petitioner has provided copies of the court decision dissolving [redacted] and related filings, which were previously in the record of proceeding before the director and the AAO. The only new evidence in the petitioner's second appeal is a copy of the Ninth Circuit Court of Appeals decision, *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

The appeal shall be dismissed for failing to meet applicable requirements. As no appeal lies from the AAO's decision, and as the petitioner's filing does not meet the requirements for a motion to reopen or a motion to reconsider, it must be dismissed. A motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for USCIS to grant an extension to the petitioner to file evidence or arguments in the future. The fact that the petitioner on the Form I-290B incorrectly checked box B ("I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days"), does not permit the petitioner to submit evidence beyond the 30 day period allowed for motions to reopen or reconsider. 8 C.F.R. § 103.5(a)(1)(i).

The AAO notes that, even if the petitioner had properly submitted a motion within the time permitted by regulation, the brief and evidence provided as of November 5, 2012, would be insufficient to grant the motion. 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. 8 C.F.R. § 103.5(a)(2). Counsel's brief does not state new facts, therefore, it would not meet the requirements for a motion to reopen.

A motion to reconsider must: (1) 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 USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the AAO noted in its September 5, 2012, decision, the labor certification underlying the instant petition required a U.S. bachelor's degree in H.4 of ETA Form 9089, and failed to indicate that the petitioner would accept a lesser degree in H.8, a foreign degree in H.9, or a combination of education and experience anywhere on the ETA Form 9089. The beneficiary's purported degree was not issued by an accredited U.S. university or college. The company, [REDACTED] that issued the beneficiary's degree was dissolved by court order on July 1, 2002, which was prior to the filing of the petitioner's labor certification and Form I-140. That company was not authorized by the state of Hawaii to issue postsecondary degrees at the time the beneficiary obtained the degree, and its operation was in contravention of that state's law. In its appeal, the petitioner has provided copies of the court decision dissolving [REDACTED] and related filings, which were previously in the record of proceeding. The only new evidence in the petitioner's second appeal is a Ninth Circuit Court of Appeals decision, *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Counsel alleges, "USCIS is imposing an additional 'implied' requirement for positions that employers themselves have no knowledge of." Counsel cites to *Kazarian* for the proposition that USCIS may not "unilaterally impose novel substantive or evidentiary requirements." *Id.* at 1121. As the AAO's prior decision discusses, the record of proceeding indicates that the company that issued the beneficiary's purported degree was operating in violation of state law; it was not authorized by the state of Hawaii to issue postsecondary degrees; and no known accrediting body recognized the purported degrees issued by the company. Counsel alleges that the AAO dismissed the first appeal solely based on whether [REDACTED] was accredited. As stated in the decision, accreditation was considered as a factor demonstrating whether or not the company was a degree-granting institution. This was in concert with the consideration that the company was not authorized to operate as a postsecondary institution within the state of Hawaii. Further, the AAO discussed evidence in the record that cast doubt on whether the beneficiary attended the company's

courses for the period of time claimed, as the beneficiary's purported degree was issued before the beneficiary had completed her claimed coursework. Based on the evidence in the record at the time, the petitioner had not established that the beneficiary met the minimum requirements for the position offered as indicated on the labor certification. Counsel's reliance on *Kazarian* is misplaced. The failure to document by a preponderance of the evidence that the beneficiary possessed the minimum qualifications for the position offered is not a novel substantive or evidentiary requirement. It is established that, in visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). As the petitioner has not provided evidence establishing that the AAO's decision was based on an incorrect application of law of policy, the petitioner's second appeal would not meet the requirements for a motion to reconsider.

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 matter, the petitioner has not met that burden. The appeal 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 appeal will be dismissed, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The appeal is dismissed.