



U.S. Citizenship  
and Immigration  
Services

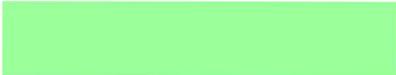
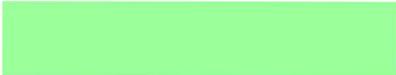
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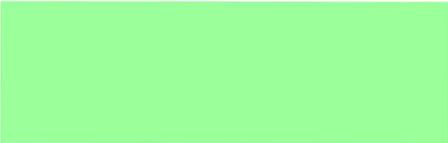
Office: TEXAS SERVICE CENTER

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, denied the immigrant visa petition. Counsel appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal and the petitioner filed a motion to reopen and reconsider. The AAO dismissed the motion and appeal based upon counsel's request to withdraw the matter. Counsel subsequently filed another motion to reopen in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

In this matter, the director denied the petition on December 28, 2007. Counsel filed an appeal to the AAO on January 28, 2008. The AAO dismissed the appeal on May 4, 2010, and the petitioner filed a motion on June 3, 2010. On January 12, 2011, counsel requested that the matter before the AAO be withdrawn. The AAO dismissed the motion and appeal as withdrawn on February 15, 2011. The petitioner was notified in the withdrawal decision that "the withdrawal may not be retracted." 8 C.F.R. § 103.2(b)(6). Therefore, the withdrawal will not be retracted, and the motion must be dismissed for this reason. *See also* 8 C.F.R. §§ 103.5(a)(2), (4).

The motion will also be dismissed as untimely because the petitioner failed to file it within 30 days of the AAO's decision. United States Citizenship and Immigration Services (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 decision on the withdrawal request was issued by the AAO on February 15, 2011. Counsel filed the motion to reopen the matter on November 10, 2011, 268 days after the 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. Even accepting counsel's argument that the motion should be considered due to USCIS's approval of a subsequently filed petition on March 2, 2011, counsel would have had time to timely file a motion on the AAO's February 15, 2011 decision after the approval of the other petition.

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.

Accordingly, the motion will be dismissed.

**ORDER:** The motion is dismissed.