

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: **MAY 06 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:



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.

Thank you,

A handwritten signature in black ink that reads "Elizabeth McCormack".

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). The AAO subsequently dismissed the appeal. The petitioner has now filed a motion to reopen/reconsider the AAO's decision in accordance with 8 C.F.R. §103.5. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(c), 103.5(a)(3), and 103.5(a)(4).

United States Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part, that "[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 USCIS policy. A motion to reconsider... must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision."

In this matter, the petitioner's assertions are not supported by pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law or USCIS policy. Furthermore, the petitioner has failed to establish that the AAO's decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The motion must be dismissed. 8 C.F.R. § 103.5(a)(4).

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.

Although the motion to reopen and reconsider contains evidence of [REDACTED] being reinstated in the state of Maryland as of February 6, 2012, the petitioner failed to submit any evidence to overcome that it had ceased doing business in the state of Maryland during its 4-year period of forfeiture. In fact, the state record shows that the petitioning entity was forfeited for failure to file property return for 2008 on November 14, 2008, and remained in forfeiture status until February 6, 2012. There has been no evidence submitted such as tax returns to demonstrate that the petitioner was in fact doing business during the 4-year period of forfeiture. As noted in the AAO denial, the petitioner, because of its status is considered a legal non-entity for the 4-year period; and therefore, cannot be said to be in business. A

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labor certification is only valid for the particular job opportunity and for the geographic location described therein. 20 C.F.R. § 656.30(c)(2).

In addition to the reasons stated above, the AAO dismissed the appeal because the Form ETA 750 is for a job opportunity in Delaware, and therefore, the I-140 is not accompanied by a valid labor certificate for a job opportunity in Maryland. The offered position is in Maryland, a different metropolitan statistical area from Delaware. 20 C.F.R. § 656.30(c)(2). The petitioner failed to address this issue on motion.

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 dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.