



U.S. Citizenship  
and Immigration  
Services

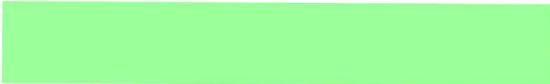
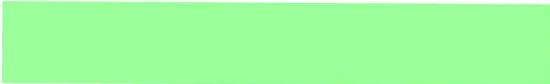
(b)(6)



DATE: OCT 29 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:

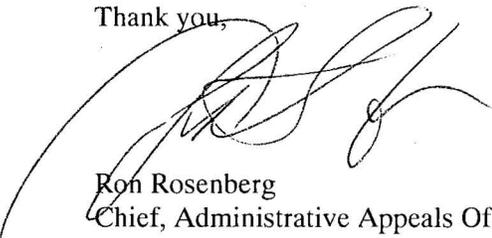
SELF-REPRESENTED

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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The petitioner filed a motion to reopen and motion to reconsider. On February 5, 2013, the AAO granted the motion and affirmed its previous decision. The matter is now before the AAO on another motion.<sup>1</sup> The motion will be denied, the previous decision of the AAO dated February 5, 2013 will be affirmed, and the petition will remain denied.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a professional or a skilled worker. The director determined, and the AAO affirmed, that the petitioner failed to demonstrate a continuing ability to pay the proffered wage beginning on the priority date onwards.

The regulation at 8 C.F.R. § 103.5(a)(2) states, 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.” Based on the plain meaning of “new,” a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>2</sup>

The regulation at 8 C.F.R. § 103.5(a)(3) states, 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 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.”

On motion, the petitioner asserts that it will “state new facts and new evidence which we hope will result in a favorable decision. We also believe that the decision failed to apply in this case jurisprudence in cases analogous to this case. We also request for relief based on equity.” The petitioner presented no facts or evidence on motion that may be considered “new” under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen. Nor does the petitioner cite to any relevant precedent that could be considered a proper basis for a motion to reconsider.

The motion is dated March 7, 2013. As of this date, more than seven months later, the AAO has received nothing further, and the regulation requires that any brief shall be submitted directly to the

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<sup>1</sup> On the Form I-290B submitted on March 7, 2013, the petitioner checked Box B, which states “I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days.” However, the accompanying statement indicates that it is an “appeal/motion.” 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 motion is not properly within the AAO's jurisdiction. However, because the petitioner characterized its filing as a motion in its statement, it will be accepted and considered as a motion.

<sup>2</sup> The word “new” is defined as “1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . .” *Webster's II New Riverside University Dictionary* 792 (1984) (emphasis in original).

AAO. 8 C.F.R. §§ 103.3(a)(2)(vii) and (viii). Moreover, Page 2 of the Form I-290B Instructions states that no provision exists to permit additional time to submit a brief and/or evidence on motions. Any additional evidence must be submitted with the motion. The petitioner's motion must be complete upon filing and submitted within the time provided. See 8 C.F.R. § 103.2(b)(11).

In the instant matter, the petitioner has not presented any new facts or evidence that could be considered a proper basis for a motion to reopen. Nor has the petitioner specifically addressed the reasons stated for denial or cited to any relevant precedent that could be considered a proper basis for a motion to reconsider. Therefore, the motion must be dismissed.

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 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). Here, that burden has not been met.

**ORDER:** The motion is denied. The previous decision of the AAO, dated February 5, 2013, is affirmed. The petition remains denied.