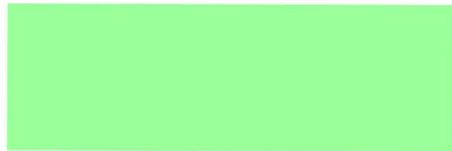


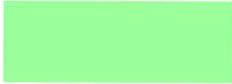
(b)(6)

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

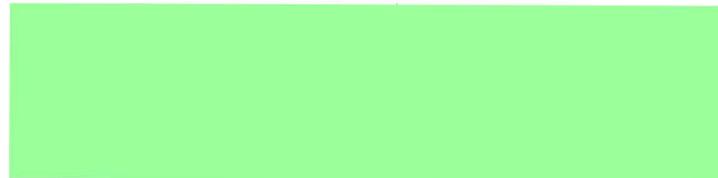


DATE: **FEB 04 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center (the director) on January 18, 2013. The petitioner appealed the director's decision to the Administrative Appeals Office (AAO). The AAO subsequently dismissed the appeal on November 1, 2013. The matter is now before the AAO on a motion to reopen.<sup>1</sup> The motion will be dismissed.

The AAO finds that the petitioner has not filed a proper motion to reopen. 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." The request was not accompanied by any affidavits or other documentary evidence.

Nor has the petitioner filed a proper motion to reconsider. 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 [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." The motion was not accompanied by arguments based on precedent decisions to establish that the decision was based on an incorrect application of law or policy and does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

A motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for United States Citizenship and Immigration Services (USCIS) to grant an extension in order to await future correspondence that may or may not include evidence or arguments. On motion, current counsel to the petitioner stated: "The basis of the appeal is that the Service's decision was based on incorrect application of law. The decision was incorrect based on the evidence of record at the time of initial decision. Our legal brief will be submitted to the AAO within 30 days."<sup>2</sup>

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. The motion to reopen and reconsider is dismissed because it fails to meet the requirements for a motion to reopen and reconsider in that no evidence is attached nor arguments accompanied by precedent decisions.

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<sup>1</sup> On the Form I-290B submitted on December 4, 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." It is noted that the AAO does not exercise appellate jurisdiction over its own decisions. The AAO exercises appellate jurisdiction only over 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. However, because the petitioner characterized its filing as a motion to reopen and reconsider on the letter dated December 2, 2013, which accompanied the Form I-290B, it will be accepted as a motion.

<sup>2</sup> To date, counsel has not submitted a brief and/or any additional evidence in support of the petitioner's motion.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden. Accordingly, the motion 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 motion is dismissed.