

(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 28 2014**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:  
[REDACTED]

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 petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on March 15, 2013, the AAO dismissed the appeal. The petitioner filed a motion to reopen and reconsider the AAO's decision, and the AAO affirmed its prior decision on October 31, 2013. Counsel to the petitioner filed a Form I-290B, Notice of Appeal or Motion, with the AAO. The matter will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(3), and 103.5(a)(4).

At the outset, the petitioner may not file an appeal to the AAO regarding one of its own decisions. Counsel for the petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that the petitioner was filing an appeal of the AAO's October 31, 2013 decision that denied the prior motion to reopen and reconsider. The AAO does not exercise appellate jurisdiction over its own decisions, and the matter will be dismissed for this reason.

Even if the instant matter could be viewed as a motion to reopen or reconsider, it was untimely filed. United States Citizenship and Immigration Services (USCIS) regulations require that motions to reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). If the unfavorable decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.8(b). Similarly, USCIS regulations require that motions to reopen be filed within 30 days of the underlying decision, or 33 days if the decision was mailed, 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 instant filing was received by the AAO on December 4, 2013, 34 days after the AAO's October 31, 2013 decision. The record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its counsel of record. The cover page of the AAO's October 31, 2013 decision clearly instructed the petitioner that it may file either a motion to reopen or a motion to reconsider the decision pursuant to the requirements found at 8 C.F.R. § 103.5, and that any motion must be filed with the office that originally decided the case within 33 days of the decision that the motion seeks to reconsider or reopen as required by 8 C.F.R. § 103.5. As the petitioner has not filed either a motion to reopen or a motion to reconsider and the record does not establish that the failure to file the Form I-290B within 33 days of the decision was reasonable and beyond the affected party's control, the instant filing is improper and untimely and must be dismissed for these reasons.

Further, even if the defects in the instant filing could be cured, the petitioner has not properly demonstrated that this filing could qualify as a motion to reopen or reconsider the AAO's prior decision. 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." Part 3 of the Form I-290B states that the petitioner will supplement the record with a brief or other evidence within 30 days, but the AAO did not receive any additional evidence submitted by the petitioner. A request for 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 in order to await future correspondence that may or may not include evidence or arguments. The fact that the petitioner incorrectly checked box B on the Form I-290B ("I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days"), does not allow for the submission of evidence beyond the 30 day period allowed for motions to reopen. The petitioner

has also not filed a proper motion to reconsider because it has not submitted any evidence or arguments based on precedent decisions. Therefore, the instant matter does not constitute a motion to reopen or reconsider.

Additionally, 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). 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.