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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: **JAN 03 2014** OFFICE: NEBRASKA SERVICE CENTER

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 APPELLANT:

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 that reads "Elizabeth McCormack".

Ron Rosenberg  
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), and, on November 12, 2012, the AAO dismissed the appeal. Counsel to the appellant filed a motion to 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)(i), 103.5(a)(3), and 103.5(a)(4).

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). Similarly, 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. *Id.* In this matter, the motion was filed on July 23, 2013, 250 days after the AAO's November 15, 2012, decision.

Counsel states on appeal that he was not aware of the AAO's dismissal of the appeal because, although he had filed a valid Form G-28, Notice of Entry of Appearance as Attorney, the AAO's decision was mailed to the petitioner's former attorney of record. Counsel's assertion is not supported by evidence in the record. Counsel did file a Form G-28 on May 18, 2011; however, that form establishes that counsel was authorized to represent [REDACTED]. As detailed in the AAO's decision, the record does not establish that a valid successor-in-interest relationship exists between the petitioner [REDACTED]. Therefore, the AAO explained on page 3 of its decision that it was providing the decision to the petitioner and to the petitioner's most current attorney of record.<sup>1</sup>

The record indicates that the AAO's decision was mailed to both the petitioner at its business address and to its most current counsel of record and that neither decision was returned as undeliverable. 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 for that 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

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<sup>1</sup> It is significant to note that the AAO's decision provided a thorough discussion of whether the appellant was a valid successor-in-interest to the petitioner and provided a detailed summary of the types of evidence that could be used to establish that such a relationship existed. Although counsel for the appellant concedes that he did receive a copy of the AAO's decision from counsel for the petitioner, the current motion to reconsider does not challenge the AAO's conclusion and is not accompanied by any evidence to attempt to establish that a valid successor-in-interest relation exists and that the appellant has standing in this matter. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.

Moreover, the record reveals that that the current petition may be moot. In order for the instant petition to be approved, the petitioner must maintain a continuing intent to permanently employ the beneficiary in the position offered on the labor certification. It does not appear, however, that the beneficiary still intends to be employed by the petitioner in the offered job. The current petition was filed on August 18, 2006, and asserts that the petitioner desired to permanently employ the beneficiary as a support services representative. On June 29, 2009, another company filed a Form I-140 petition on behalf of this beneficiary, stating its intent to permanently employ the beneficiary as an application specialist (receipt # [REDACTED]). The beneficiary signed the labor certification that accompanied this later petition, affirming under penalty of perjury his intent "to accept the position offered in Section H of this application if a labor certification is approved and [he is] granted a visa or an adjustment of status based on this application." The petition was approved on September 9, 2009, and the beneficiary was issued an immigrant visa. The instant petition therefore appears moot. In any further proceedings, the petitioner should address this issue.

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 to reconsider is dismissed.