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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: **JUN 19 2014** OFFICE: NEBRASKA 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:

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 "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based visa petition was denied by the Director, Nebraska Service Center (director). The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). We considered three subsequent motions to reopen and/or motions to reconsider. The matter is now before us on a fourth motion, a motion to reopen and to reconsider. The motion will be dismissed.

The petitioner describes itself as an electrical engineering firm. It seeks to employ the beneficiary permanently in the United States as an electrical engineer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had gone out of business and that the successor had not established that it was the successor-in-interest to the petitioner. Therefore, the director concluded that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director also determined that the petitioner had not established that the beneficiary possessed the required work experience detailed on the labor certification. The director denied the petition accordingly. We affirmed the director's decision and dismissed the appeal on May 22, 2012. In our decision we found that the appellant had not established it was a successor-in-interest to the petitioner, that the petitioner did not establish the ability to pay, and that the beneficiary was not qualified for the position.

On June 4, 2013, we granted a motion to reopen and motion to reconsider and again affirmed the director's finding that the appellant had not established it was a successor-in-interest to the petitioner. We also affirmed the director's determination that the petitioner had not established the ability to pay the proffered wage since the priority date. We withdrew the director's finding that the petitioner had not established that the beneficiary possessed the minimum work experience required by the labor certification. We again dismissed the appeal.

We dismissed a subsequent motion to reconsider on September 20, 2013.

On February 7, 2014, we granted a motion to reopen and motion to reconsider and again affirmed the director's finding that the appellant had not established it was a successor-in-interest to the petitioner. We also affirmed the director's determination that the petitioner had not established the ability to pay the proffered wage since the priority date. We again dismissed the appeal.

United States Citizenship and Immigration Services (USCIS) regulations require that motions to reopen and 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.* The instant motion was filed on March 14, 2014, 35 days after the AAO's February 2, 2014 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. As the record does not establish that the failure to file the motion to reopen 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.

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NON-PRECEDENT DECISION

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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 met that burden.

**ORDER:** The motion is dismissed.