

(b)(6)



U.S. Citizenship  
and Immigration  
Services

DATE: JUN 20 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:

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 preference visa petition was denied by the Director, Nebraska Service Center (the director) on April 13, 2009. The petitioner filed an untimely motion to reconsider on May 19, 2009, which the director rejected on October 15, 2009. The petitioner filed an appeal on November 16, 2009, which the director treated as a motion and dismissed. The petitioner appealed the decision to the Administrative Appeals Office (AAO). On May 31, 2013 we dismissed the appeal. The petitioner filed a subsequent motion. On November 26, 2013, we granted the motion, affirmed the prior decision, and denied the petition. The petitioner filed a second motion which we dismissed on March 13, 2014. The matter is now before us on a third motion to reopen and motion to reconsider. The motions will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i) and 103.5(a)(4).

The director found that the petitioner had not established the ability to pay the proffered wage. On appeal, we sent a notice of intent to dismiss and request for evidence, seeking additional evidence of the petitioner's ability to pay. Upon consideration of the petitioner's response, we dismissed the appeal, finding that the petitioner had not established the ability to pay the proffered wage. We also indicated that the petition may be moot, as the petitioner no longer owned the location of the store where the beneficiary was to be employed. On motion, upon further review and consideration, we found that the record did not establish the petitioner's ability to pay the proffered wage. We again found no evidence that the petitioner intended to employ the beneficiary at an owned location. We affirmed our previous decision. We dismissed the petitioner's second motion for failure to establish the requirements of a motion to reopen or a motion to reconsider. In that decision we also found beyond the decision of the director that the beneficiary was not qualified to perform the duties of the position as of the priority date. The petitioner has filed a third motion to reopen and reconsider

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). The motion to reconsider was not filed within the required time period and must be dismissed. 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 April 16, 2014, 34 days after the AAO's March 13, 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 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.

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 motions 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 motions are dismissed.