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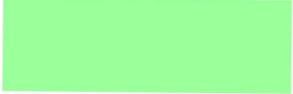
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

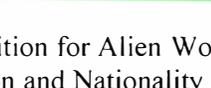


U.S. Citizenship
and Immigration
Services



DATE: **JAN 30 2015**

OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(ii)

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center (the director) and the Administrative Appeals Office (AAO) summarily dismissed the subsequent appeal. The matter is now before us on a motion to reopen. The motion will be dismissed, our previous decision will be affirmed, and the petition remains denied.

The petitioner is a Christian radio station. It seeks to employ the beneficiary permanently in the United States as a radio production director. As required by statute, the petition is accompanied by labor certification application approved by the United States Department of Labor (DOL). The petitioner requests classification of the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). The director determined that the petitioner did not establish that it had the ability to pay the proffered wage. The director denied the petition accordingly.

Counsel filed the Form I-290B, Notice of Appeal or Motion on April 25, 2014 and indicated that a brief and/or additional evidence would be submitted within 30 days. On the statement accompanying the Form I-290B, counsel indicated that the petitioner would provide additional documentation that it had the ability to pay the proffered wage as of the August 5, 2010 priority date. Counsel stated that she would file evidence of the remuneration received by the beneficiary to be combined with the petitioner's 2010 through 2013 net income, net current assets and other financial assets. Nothing further was received. On November 13, 2014, we summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v), as the appeal failed to identify specifically any erroneous conclusion of law or statement of fact.

Counsel filed the instant Form I-290B on December 10, 2014. In the statement accompanying the Form I-290B counsel states that she submitted a brief and additional documentation to the record on May 22, 2014 and provides copies of tracking records to support her assertions. Counsel asserts that the brief and additional evidence in support of the appeal were submitted directly to the Nebraska Service Center (NSC). Although the instructions to Form I-290B state that a brief and evidence not submitted with the Form I-290B must be submitted directly to our office, counsel asserts that she forwarded the brief and documents to the NSC as instructed by the Form I-140 denial. Counsel asserts that the supporting documents were delivered to the NSC on May 22, 2014 and not returned and she assumed that these documents were forwarded to us. Although the record does not include the documents received by the NSC on May 22, 2014, the motion contains a copy of a brief dated May 20, 2014 and additional evidence of the petitioner's ability to pay the proffered wage.

The fact that counsel timely forwarded a brief and additional evidence to the NSC does not establish that our decision to summarily dismiss the appeal was incorrect. The instructions to Form I-290B state that a brief and evidence not submitted with the Form I-290B must be submitted directly to our office. As such, counsel failed to comply with the instructions to the Form I-290B. Without the May 20, 2014 brief and evidence the petitioner had failed to state a basis for the appeal. On motion, counsel fails to establish that our November 13, 2014 decision was based on an incorrect application of law. Therefore, our decision to summarily dismiss the appeal is affirmed.

In our November 13, 2014 decision we noted that the Kansas Secretary of State records show that the petitioner has been forfeited since 2001. See www.ks.gov (accessed October 30, 2014 and January 13, 2015). The petitioner failed to address this issue on 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.

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. The petition remains denied.