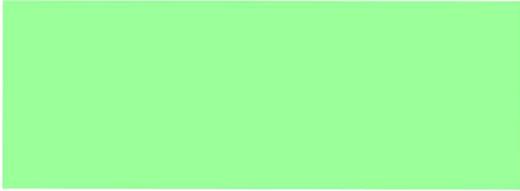


(b)(6)

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: **OCT 15 2013** Office: VERMONT SERVICE CENTER FILE:

IN RE: PETITIONER:
BENEFICIARY:

PETITION: Petition for a Qualifying Family Member Pursuant to Section 101(a)(15)(U)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(ii)

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the Petition for Qualifying Family Member of a U-1 Recipient (Form I-918 Supplement A) submitted by the petitioner on behalf of her spouse and the Administrative Appeals Office (AAO) rejected the subsequent appeal as untimely filed. The matter is again before the AAO on motion to reopen and reconsider. The motion will be dismissed and the underlying petition will remain denied.

The petitioner seeks nonimmigrant classification of her spouse under section 101(a)(15)(U)(ii) of the Immigration and Nationality Act (the Act), as a qualifying family member of a U-1 nonimmigrant. On April 15, 2011, the director denied the Form I-918 Supplement A filed by the petitioner on behalf of her spouse because the petitioner's Form I-918, Petition for U Nonimmigrant Status (Form I-918 U petition), was denied. The petitioner, through counsel, filed an appeal with the AAO. The appeal was rejected as untimely filed. In addition, the AAO determined that even if the appeal had been timely filed, it would have been summarily dismissed because counsel failed to state a basis for the appeal. The petitioner, through counsel, timely filed the instant motion with the AAO.

The regulation at 8 C.F.R. § 103.5(a) states, in pertinent part:

* * *

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceedings and be supported by affidavits or other documentary evidence. . . .

(3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. . . .

* * *

The petitioner has failed to meet either the requirements for a motion to reopen or a motion to reconsider. On motion, counsel claims that the appeal was timely filed on May 18, 2011, and she submits the Federal Express tracking statement in support of her claim. The record reflects that the director denied the Form I-918 Supplement A on April 15, 2011, and the petitioner initially submitted the Notice of Appeal or Motion (Form I-290B) on May 18, 2011. However, the director rejected the appeal because the Form I-290B was not signed. An appeal that is not signed will be rejected. *See* 8 C.F.R. § 103.2(a)(7)(i). The appeal was not received by the service center as properly filed until June 20, 2011. Accordingly, the appeal was untimely filed. *See* 8 C.F.R. § 103.2(a)(7)(iii) (A benefit request that is rejected will not retain a filing date). Counsel has failed to state any new facts and the motion to reopen must be dismissed. *See* 8 C.F.R. § 103.5(a)(2).

Counsel's remaining claims on motion, as stated in her May 16, 2011 brief, relate to the merits of the petitioner's Form I-918 U petition and do not address this petition, the Form I-918 Supplement A filed on her spouse's behalf. Counsel claims that the petitioner's appeal of her Form I-918 U petition denial remains pending. On May 13, 2013, the AAO dismissed the petitioner's appeal of her Form I-918 U petition. On September 23, 2013, the AAO granted counsel's motion to reopen, but affirmed the dismissal of her appeal. Consequently, the petitioner's request for U nonimmigrant status remains denied.

On motion, counsel cites no relevant precedent decisions or binding caselaw to show that the AAO's prior decision on this petition erroneously applied the pertinent law or United States Citizenship and Immigration Service (USCIS) policy as required. Consequently, the motion to reconsider must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(3)-(4).

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). Here, that burden has not been met.

ORDER: The motion is dismissed. The May 17, 2013 decision of the Administrative Appeals Office is affirmed. The petition remains denied.