



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 19 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

Beneficiaries: [REDACTED]

PETITION: Petition for a Commonwealth of the Northern Mariana Islands (CNMI) Only Nonimmigrant Transitional Worker Classification Pursuant to 48 U.S.C. § 1806(d)

ON BEHALF OF PETITIONER:

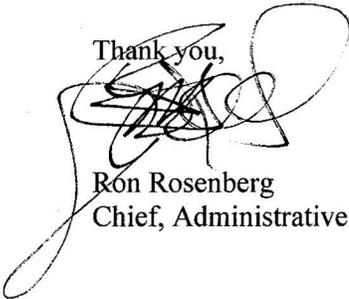
SELF-REPRESENTED

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 service center director denied the nonimmigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO), and we summarily dismissed the appeal. The matter is again before us on a combined motion to reopen and motion to reconsider. The combined motion will be dismissed.

I. PROCEDURAL HISTORY

The petitioner submitted a Petition for a Commonwealth of the Northern Mariana Islands (CNMI) Only Nonimmigrant Transitional Worker (Form I-129CW) to the California Service Center. On the Form I-129CW petition, the petitioner describes itself as a commercial cleaning business established in 1992. In order to employ the beneficiaries in what it designates as commercial cleaner positions, the petitioner seeks to classify them as CNMI-Only Nonimmigrant Transitional Workers (CW-1) pursuant to 48 U.S.C. § 1806(d).

The director denied the petition, finding that the petitioner failed to establish that the beneficiaries were lawfully present in the CNMI at the time the petition was filed.¹ Thereafter, the petitioner submitted a Notice of Appeal or Motion (Form I-290B). The petitioner indicated that it was filing an appeal. We reviewed the submission; however, the petitioner failed to identify specifically any erroneous conclusion of law or a statement of fact as a basis for the appeal. Therefore, the appeal was summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).² Subsequently, the petitioner submitted the instant Form I-290B. The petitioner indicated that it was filing a combined motion to reopen and reconsider. In the accompanying brief, the petitioner's owner acknowledges the requirements under the pertinent regulations and states her dissatisfaction with the timeframe constraints.

The record of proceeding contains: (1) the petitioner's Form I-129CW and supporting documents; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice

¹ Title 8 C.F.R. § 214.2(w)(7)(v) states the following with regard to a CW-1 nonimmigrant:

If a CW-1's employment has been terminated prior to the filing of a petition by a prospective new employer consistent with paragraphs (w)(7)(i) and (ii), the CW-1 will not be considered to be in violation of his or her CW-1 status during the 30-day period immediately following the date on which the CW-1's employment terminated if a nonfrivolous petition for new employment is filed consistent with this paragraph within that 30-day period and the CW-1 does not otherwise violate the terms and conditions of his or her status during that 30-day period.

The beneficiaries were previously granted CW-1 classification from March 27, 2012 to March 26, 2013. The last pay statements in the record of proceeding are dated March 22, 2013. The instant CW-1 petition was filed on May 22, 2013, which is more than 30 days from the date the prior employment was terminated.

² An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify *specifically* any erroneous conclusion of law or statement of fact for the appeal (emphasis added)."

of decision; (5) the Form I-290B (appeal) and supporting materials; (6) our decision on the appeal; and (7) the Form I-290B (combined motion) and supporting materials.

Our discussion will focus on whether the prior decision, that is the decision to summarily dismiss the appeal, was correct. Upon review, we conclude that the motion does not merit either reopening or reconsideration.

II. LAW

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a U.S. Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), "*Processing motions in proceedings before the Service*," "[a] motion that does not meet applicable requirements shall be dismissed."

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "*Requirements for motion to reopen*," states:

A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence. . . .

This provision is supplemented by the related instruction at Part 3 of the Form I-290B, which states:³

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence.

³ The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission.

Further, the new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

C. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(3), "*Requirements for motion to reconsider*," states:

A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

These provisions are augmented by the related instruction at Part 3 of the Form I-290B, which states:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider should not be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991) ("Arguments for consideration on appeal should all be submitted at one time, rather than in piecemeal fashion."). Rather, any "arguments" that are raised in a motion to reconsider should flow from new law or a *de novo* legal determination that could not have been addressed by the affected party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); *see also Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013). Further, the reiteration of previous arguments or general allegations of error in the prior decision will not suffice. Instead, the affected party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. *See Matter of O-S-G-*, 24 I&N Dec. at 60.

III. DISCUSSION AND ANALYSIS

The submission constituting the combined motion consists of the following: (1) the Form I-290B; and (2) a letter from the petitioner. In the letter dated September 10, 2014, the petitioner states, in part:

We are requesting your good office to reconsider again the appeal of my two Applicants on there Denied CW-1 ([REDACTED]).

- a) [Beneficiary #1], Foreign National living in the Commonwealth of Northern Mariana Islands 17 years, immediate relative of a US Citizen under INBA as Child under age 21 of US Citizen. See attached documents.
- b) [Beneficiary #2], Foreign National living in the Commonwealth of Northern Islands 25 years.

Reason of denied CW-1 was they exceeded to the 30 days grace period before to found out prospective employer which is [REDACTED]. I believed this 30 days grace period policy is too short in the condition of economy here in CNMI. They are living, working here legally for so many years thus not meeting this requirement 30 days grace period they gonna be out of status. I believe there's no PERFECT LAW, This is irreparable damages for them. I hope you can review this policy and the fact is a lot of works are affected by this law.

(Errors in the original.) Again, we note that this motion is filed in response to our decision dated August 18, 2014, which summarily dismissed the appeal. In other words, the issue here is whether our decision to summarily dismiss the appeal was correct.

A. Dismissal of the Motion to Reopen

Upon review of the evidence, we observe that the petitioner did not provide new facts that are supported by affidavits and/or documentary evidence that would change the result. The petitioner did not submit evidence that the summary dismissal was erroneous.

"There is a strong public interest in bringing [a case] to a close as promptly as is consistent with the interest in giving the [parties] a fair opportunity to develop and present their respective cases." *INS v. Abudu*, 485 U.S. 94, 107 (1988). Motions for the reopening 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. *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" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden.

B. Dismissal of the Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an

application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *See* 8 C.F.R. § 103.5(a)(3) (detailing the requirements for a motion to reconsider).

The issue is whether we summarily dismissed the appeal in error. Upon review, we note that the petitioner does not cite a statutory or regulatory authority, case law, or precedent decision to establish that the prior decision was based on an incorrect application of law or USCIS policy. Moreover, the petitioner has not established that the decision was incorrect based on the evidence of record at the time of the decision. In short, the petitioner has not submitted any document that would meet the requirements of a motion to reconsider.

A review of the record and the prior decision indicates that we properly applied the statute and regulations to the petitioner's case. The decision was the proper result under the applicable statutory and regulatory provisions. Based upon a complete review, the motion to reconsider must be dismissed.

C. Motion is Improperly Filed

Moreover, we find that the submission did not satisfy the requirements of a motion. Specifically, the regulation at 8 C.F.R. § 103.5(a)(1) states the following:

(iii) Filing Requirements—A motion shall be submitted on Form I-290B and may be accompanied by a brief. It must be:

* * *

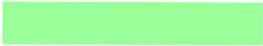
(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

In this matter, the submission constituting the motion did not contain a statement as to whether or not the unfavorable decision has been or is the subject of any judicial proceeding as required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Thus, the petitioner failed to comply with the requirements as set by the regulations for properly filing a motion. Moreover, if the decision has been or is the subject of any judicial proceeding, the petitioner failed to provide any information regarding "the court, nature, date, and status or result of the proceeding" as stipulated in the regulations. Accordingly, the filing did not meet the applicable requirement for motions as stated at 8 C.F.R. § 103.5(a)(1)(iii)(C), and must also be dismissed for this reason.

IV. CONCLUSION

The petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

(b)(6)



NON-PRECEDENT DECISION

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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. Accordingly, the combined motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decision will not be disturbed.

ORDER: The combined motion is dismissed.