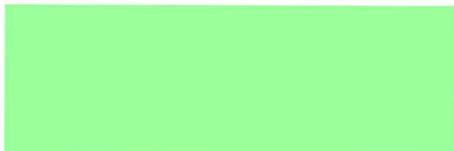




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 07 2013** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

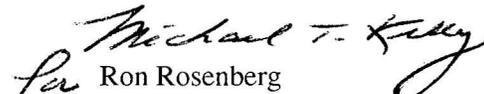
SELF-REPRESENTED

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,


for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen. The motion will be dismissed. The petition will remain denied.

On the Form I-129 visa petition, the petitioner describes itself as a translation and realty service established in 2000. In order to employ the beneficiary in what it designates as a pharmacology translator position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The relevant facts and procedural history of this case were set forth adequately in its prior decision, so the AAO will here only repeat such facts and procedural history here as necessary. The director denied the petition on June 19, 2012, on the basis of his determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation. The petitioner filed a timely appeal. In its March 5, 2013 decision dismissing the petitioner's appeal, the AAO concurred with the director's decision.

The petitioner timely filed the instant motion to reopen on April 1, 2013. On motion to reopen, the petitioner submits a brief argument made on the Form I-290B, Notice of Appeal or Motion. It submits no supporting documentation.

The regulation at 8 C.F.R. § 103.5(a)(2) states that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.¹ Generally, the evidence sought to be reviewed as presenting new facts must be material, previously

¹ The provision at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, the following:

Requirements for motion to reopen. A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence

This regulation is supplemented by the instructions on the Form I-290B, by operation of the rule at 8 C.F.R. § 103.2(a)(1) that all submissions must comply with the instructions that appear on any form prescribed for those submissions. With regard to motions to reopen, Part 3 of the Form I-290B submitted by counsel states the following:

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

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

[E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission.

unavailable, and not discoverable earlier in the proceeding. *See* 8 C.F.R. § 1003.23(b)(3).² As the petitioner submits no affidavits or other documentary evidence to support the brief argument it makes on the Form I-290B, its submission contains no evidence that could be considered *new* pursuant to 8 C.F.R. § 103.5(a)(2). Accordingly, the petitioner's submission does not meet the requirements of a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(4) states that “[a] motion that does not meet applicable requirements shall be dismissed.” Because the motion to reopen does not meet the applicable requirements set forth at 8 C.F.R. § 103.5(a)(2), the motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4). The proceedings will therefore not be reopened, and the AAO's previous decision will not be disturbed.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are 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.” *INS v. Abudu*, 485 U.S. at 110. The petitioner's submission does not meet that burden, and it therefore does not qualify as a motion to reopen.

Nor does the petitioner's submission contain the statement mandated by 8 C.F.R. § 103.5(a)(1)(iii)(C) with regard to whether the unfavorable decision has been, or is, the subject of any judicial proceeding. For this additional reason, it does not meet the requirements of a motion to reconsider.

It should be noted for the record that, unless U.S. Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen 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).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The decision of the Administrative Appeals Office dated March 5, 2013 is affirmed. The petition remains denied.

² Also, the word “new” is defined as “1. Having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>” *Webster's II New College Dictionary* 736 (Houghton Mifflin 2001). Based upon the plain meaning of the word “new,” a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.