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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 18 2014 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:

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,

Michael T. Kelly
for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: On January 24, 2013, the Director of the Vermont Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal on September 25, 2013. The petitioner filed the instant motion to reopen the AAO's decision. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(C), 103.5(a)(2), and 103.5(a)(4).

I. PROCEDURAL AND FACTUAL BACKGROUND

The Form I-129 visa petition states that the petitioner is a home and wellness products business. In order to employ the beneficiary in what it designates as a "Market Research Analyst, Tech Editorial Division" 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 director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner had satisfied all evidentiary requirements.

As indicated above, the AAO dismissed the appeal on September 25, 2013, and counsel moves to reopen the AAO's decision. On the Form I-290B, at Part 2.D., counsel indicated that the instant motion is a motion to reopen the AAO's September 25, 2013 decision dismissing the appeal. On the Form I-290B, counsel states:

> WE KINDLY REQUEST THE APPLICATION TO BE REOPENED. THE PETITIONER IS PROVINDING [sic] AN ADDITIONAL STATEMENT WITH DETAILS OF THE SPECIALTY OCCUPATION JOB OFFER.

The AAO will therefore consider the instant motion as a motion to reopen.

In support of the statement, counsel submits a two-page letter dated October 11, 2013 from the petitioner's president, which simply provides a list of the technical duties of the proffered position, including a chart which defines the main duties of the position and the techniques related to the position.

II. LAW AND ANALYSIS

The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed."

Pursuant to the regulation governing motions to reopen, at 8 C.F.R. § 103.5(a)(2), a motion to reopen must both (1) state new facts to be provided in the reopened proceeding and (2) be supported by affidavits or other documentary evidence.[1] 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).

In this matter, counsel merely requested that the matter be reopened based on an additional statement of duties provided by the petitioner's president. However, a review of this statement reveals that the stated duties are virtually identical to the initial evidence submitted prior to adjudication of the petition. Specifically, the list of duties on page one of the October 13, 2013 letter submitted in support of the motion is identical to the list of duties set forth in the petitioner's May 15, 2012 letter submitted in support of the petition. Moreover, the chart on page two of the letter provides a generic overview of these same duties, using terms such as "market analysis," "Technical Project management and implementation," and "prepare, analyze and control budgets."

Neither counsel nor the petitioner "state[s] new facts to be provided" if the proceeding were reopened; nor does the motion include affidavits and/or documentary evidence supporting any such facts. Thus, the submissions here on motion do not meet the applicable requirements, at 8 C.F.R. § 103.5(a)(2), for a motion to reopen.

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[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 and/or 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.

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.[2]

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.

In addition, the motion shall be dismissed for failing to meet another requirement. The regulation at 8 C.F.R. § 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider, and 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." The instant motion is accompanied by no such statement and must be dismissed for this additional reason.

Finally, it should be noted for the record that, unless USCIS 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, 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.

III. CONCLUSION

Title 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." As the instant motion does not meet those requirements, 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.

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, the petitioner has not sustained that burden.

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[2] The AAO observes, however, that if the instant motion were construed as a motion to reconsider it would be dismissed for the same reason, that is, it fails to comply with the requirements for a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3). Among other flaws, the instant motion does not establish that the September 25, 2013 AAO decision that is the subject of the motion was incorrect based on the evidence of record before the AAO at the time it issued the decision. In fact, neither the petitioner nor counsel even allege that the AAO decision was incorrect.

ORDER: The motion is dismissed.