



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-A-A-F-C-, INC.

DATE: MAR. 21, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a preschool, seeks to temporarily employ the Beneficiary as a “group teacher” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition. In response to the Petitioner’s appeal, we withdrew the Director’s decision, and remanded the matter to the Director, noting that the Petitioner had not established that the proffered position qualifies as a specialty occupation. The Director subsequently denied the petition finding that the proffered position is not a specialty occupation. We then dismissed the appeal finding that the Petitioner had not established that the job offered here qualifies as a specialty occupation.

The matter is again before us on a combined motion to reopen and reconsider. In its motion, the Petitioner submits additional evidence and asserts that the proffered position is a specialty occupation.

Upon review, we will deny the combined motion.

I. MOTION – IMPROPERLY FILED

A. Legal Framework

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

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the

Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

Every benefit request submitted to U.S. Citizenship & Immigration Services (USCIS) must be executed and filed in accordance with the form instructions and with the required fee(s). *See* 8 C.F.R. § 103.2(a)(1) and (6). The date of filing is not the date of mailing, but the date when USCIS receives the intended motion properly completed, signed, and accompanied by the required fee as specified by the Form I-290B instructions. *See* 8 C.F.R. § 103.2(a)(7)(i) and (b)(1).

While we must deny a motion to reconsider if it is filed untimely, the regulations permit us, in our discretion, to excuse the untimely filing of a motion to reopen when it is demonstrated that the delay was both (a) reasonable and (b) beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

B. Untimely Filing of the Motion

We dismissed the Petitioner's appeal in a decision issued on August 7, 2015. We also properly gave notice to the Petitioner that any motion must be filed within 33 days of the date of the decision. The Form I-290B, Notice of Appeal or Motion, was received by USCIS on September 18, 2015, which is 42 days after the decision was issued.¹ Accordingly, the combined motion to reopen and reconsider was untimely filed.

C. Analysis

As the motion to reconsider was untimely, it will be denied. 8 C.F.R. § 103.5(a)(1) and (4). Neither the Act nor the pertinent regulations grant us the authority to extend the 33-day time limit for filing a motion to reconsider.

Regarding the motion to reopen, in this case, the Petitioner has not provided a reason for untimely filing the motion to reopen. The Petitioner did not, therefore, establish that the delay in filing the motion to reopen was reasonable and beyond its control. Accordingly, the motion to reopen will also be denied. 8 C.F.R. § 103.5(a)(1) and (4).

II. MOTION TO REOPEN REQUIREMENTS

Although the untimely filing of the motion to reopen is dispositive and requires that the motion be denied, we will now discuss why the submission of this motion would not have satisfied the substantive requirements. Even if the motion to reopen had been timely filed, or if the Petitioner were able to establish that the delay in filing the motion to reopen was reasonable and beyond its

¹ Although the Petitioner initially filed the Form I-290B prior to this date, it was rejected on September 14, 2015, because the check date on the payment submitted was not current. An appeal must be properly completed and executed in accordance with the applicable regulations and/or the form instructions. *See* 8 C.F.R. § 103.2(b)(1). Rejected applications and petitions will not retain a filing date. *See* 8 C.F.R. § 103.2(a)(7)(iii). There is no appeal from such rejection. *Id.*

control, the motion would still be denied because it does not meet the requirements of a motion to reopen.

The submission constituting the combined motion consists of the following: (1) the Form I-290B; (2) the Petitioner's brief; and (3) previously submitted materials including job postings, information regarding requirements for group teachers in New York, and copies of the Form I-129 and its submissions.

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 the 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 submission of a Form I-290B, Notice of Appeal or Motion, 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 4 of the Form I-290B, which states: "**Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence that establish eligibility at the time the underlying petition or application was filed."²

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*

² The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

Each 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, and such instructions are incorporated into the regulations requiring its submission.

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. Analysis

In addition to satisfying the minimum requirements at 8 C.F.R. § 103.5(a)(2), the Petitioner must also establish that the new facts to be proven in a motion to reopen possess such significance that they would likely change the results of the case. *Matter of Coelho*, 20 I&N Dec. at 473; *see also Maatougui v. Holder*, 738 F.3d at 1239-40. “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.

The motion does not state new facts that would be presented if the proceeding were to be reopened. The Petitioner provided the same information regarding group teacher requirements in New York, which we addressed in our decision and found that they do not establish that the proffered position qualifies a specialty occupation.³ As such, the Petitioner’s motion does not satisfy the requirements of a motion to reopen. The motion to reopen will be denied.

III. CONCLUSION

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 denied, the proceedings will not be reopened or reconsidered, and our previous decision will not be disturbed.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-A-A-F-C-, Inc.*, ID# 15864 (AAO Mar. 21, 2016)

³ We further noted that since the specialty occupation issue is dispositive of the Petitioner’s appeal, we will not address additional deficiencies identified on appeal.