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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**



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DATE: **JUN 05 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiaries:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 and reconsider. The motion will be dismissed. The petition will remain denied.

The petitioner represented itself on the Form I-129 as a construction company. It seeks to continue its employment of the beneficiaries as cement masons pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(ii)(b).

The director denied the petition on July 20, 2010 and we dismissed the petitioner's subsequent appeal on January 5, 2012. The petitioner, through counsel, filed the instant motion to reopen and reconsider on February 7, 2012. Counsel's submission does not meet the requirements of a motion to reopen or a motion to reconsider.

The Submission Does Not Meet the Requirements of a Motion to Reopen

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. However, in his January 31, 2012 letter submitted on motion, counsel cites no facts for consideration.

Nor does counsel submit any new evidence on motion. The U.S. Government Accountability Office report submitted by counsel is dated September 2008, more than three years before we issued our prior decision. Although the brief newspaper article dated January 30, 2012 was issued after our previous decision, counsel fails to explain how this article establishes any error in our prior determination; instead, after making assertions similar to those we discussed in our prior decision, counsel directs us to "see [the] attached newspaper article regarding H-2B issues in Guam." Accordingly, counsel's submission contains no facts or evidence that could be considered *new* under 8 C.F.R. § 103.5(a)(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. Counsel's submission does not meet that burden and it therefore does not qualify as a motion to reopen.

The Submission Does Not Meet the Requirements of a Motion to Reconsider

Counsel's submission does not qualify as a motion to reconsider, either. The regulation at 8 C.F.R. § 103.5(a)(3) states that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision to be reconsidered was based on an incorrect application of law or Service policy. However, counsel does not support his motion with any pertinent precedent decisions to establish that our prior decision was based on an incorrect application of law or Service policy and his submission therefore does not qualify as a motion to reconsider.

Conclusion

Counsel's submission does not meet the requirements of a motion to reopen or a motion to reconsider. 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 petitioner's motion does not meet the applicable requirements set forth at 8 C.F.R. §§ 103.5(a)(2) and (3) it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4). The proceedings will not be reopened or reconsidered, and our previous decision will not be disturbed.

In these proceedings, the petitioner bears the burden of proof to establish its eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. at 375. It has not met its burden and the motion will be dismissed.

ORDER: The motion is dismissed. The January 5, 2012 decision of the Administrative Appeals Office is affirmed and the petition remains denied.