U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 14 2009

EAC 04 158 51807

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The denial was appealed to the Administrative Appeals Office (AAO), and, on April 4, 2007, the AAO rejected the appeal pursuant to 8 C.F.R. §103.3(a)(2)(v)(A)(*1*). Counsel to the petitioner filed a Motion to Reconsider/Reopen the AAO's decision in accordance with 8 C.F.R. § 103.5. On January 30, 2008, the AAO dismissed the motion as untimely filed. On February 21, 2008, counsel to the petitioner filed a Motion to Reopen/Reconsider the AAO's decision of January 30, 2003 in accordance with 8 C.F.R. § 103.5. The Motion will be dismissed pursuant to 8 C.F.R. § 103.5(a)(1)(iii)(C), 8 C.F.R. § 103.5(a)(2), 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(4).

The petitioner is a medical office. It seeks to employ the beneficiary permanently in the United States as a medical record technician. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the beneficiary had entered into a sham marriage in an attempt to evade immigration laws. The director denied the petition accordingly. The denial was appealed to the AAO. The AAO found that the record did not contain a Form G-28, Notice of Entry of Appearance, showing that the attorney who filed the appeal represented the petitioner. The AAO rejected the appeal as not properly filed pursuant to 8 C.F.R. §103.3(a)(2)(v)(A)(*1*). Counsel to the petitioner then submitted a Motion to Reopen/Reconsider the AAO's decision. The AAO found that the motion was filed 40 days after the previous decision was issued. The AAO therefore dismissed the motion as untimely filed.

On motion, counsel to the petitioner asserts that the AAO erred in dismissing the previous motion because it was filed within 30 days of the AAO's decision and was therefore timely.

Upon review, the motion shall be dismissed for failing to meet applicable requirements.

The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 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." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must be dismissed for this reason.

Furthermore, upon review, the AAO will dismiss the motion for failing to meet the applicable requirements for motions to reopen set forth in 8 C.F.R. § 103.5(a)(2). "[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." *Id.* In this matter, counsel offers no new evidence on motion. Counsel states that the previous motion was timely, as it was received by the Vermont Service Center on April 30, 2007, 26 days from the AAO's April 4, 2007 decision. Counsel submits tracking statements showing that a package was delivered to Saint Albans, VT on April 30, 2007. However, the record shows that the motion that was received on April 30, 2007 was not accompanied by the proper fee. Therefore, the motion was not properly filed on April 30, 2007 and will not retain this receipt date. 8 C.F.R. §103.2(a)(7). The Vermont Service Center returned and rejected the motion.

Counsel then resubmitted the motion with the appropriate fee, and the motion was accepted on May 14, 2007. Thus, the filing date of the motion was May 14, 2007 which, as noted previously by the AAO, was 40 days after the AAO's decision. Accordingly, counsel's assertion that the previous motion was timely filed is not supported by any evidence. The unsupported statements of counsel in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Therefore, the motion does not meet the applicable requirements of a motion to reopen and must be dismissed for that reason.

Furthermore, the motion fails to meet the applicable requirements for motions to reconsider set forth in 8 C.F.R. § 103.5(a)(3). This regulation states, in pertinent part, that "[a] motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (USCIS)] policy." *Id.* In this matter, counsel fails to cite to any precedent decisions that establish that the AAO's decision to dismiss the previous motion as untimely filed was based on an incorrect application of law or policy.

As such, the motion does not meet the applicable requirements and must be dismissed. 8 C.F.R. § 103.5(a)(4).

Motions for the reopening or reconsideration 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. *See 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. With the current motion, the movant has not met that burden. The motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act. 8 U.S.C. §1361. The petitioner has not sustained that burden. Accordingly, 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.

ORDER: The motion is dismissed.