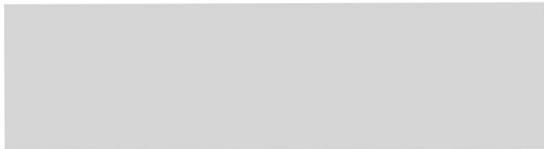




U.S. Citizenship
and Immigration
Services

(b)(6)



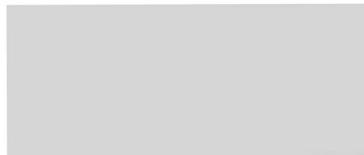
DATE: **JUN 05 2015**

FILE# [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the petition. The petitioner submitted an appeal to the Administrative Appeals Office (AAO) which we dismissed. The matter is again before us on a joint motion to reopen and reconsider. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(2), 103.5(a)(3), and 103.5(a)(4).

The petitioner filed Form I-140, Immigrant Petition for Alien Worker (Form I-140), seeking to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner, a California corporation that claims to be a jeweler, seeks to employ the beneficiary as its President.

On March 27, 2014, the director denied the petition concluding that the evidence of record did not establish that: (1) the beneficiary had been employed abroad in a primarily managerial or executive capacity; (2) the beneficiary would be employed in a primarily managerial or executive capacity in the United States; or (3) the beneficiary was an employee.

The petitioner filed an appeal which was subsequently dismissed by our office. The matter is once again before us on a combined motion to reopen and reconsider.

As we shall now discuss, the motion was filed late and therefore must be dismissed.

I. REGULATORY FRAMEWORK

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."

The pertinent section of the motion regulations, 8 C.F.R. § 103.5(a)(1)(i), states:

[A]ny 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.

Emphasis added.

The date of filing is not the date of mailing, but the date when U.S. Citizenship and Immigration Services (USCIS) receives the intended motion (1) completed, signed, and accompanied by the

required fee as specified by the Form I-290B instructions; and (2) at the location that those instructions designate for filing motions.¹

II. MOTION FILED LATE

As noted above, an affected party has 30 days from the date of an adverse USCIS decision to file a motion to reopen the proceeding or to reconsider the decision. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day period. 8 C.F.R. 103.5a(b). Also, any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(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.

The regulations do permit us, in our discretion, to excuse the untimely filing of the motion-to-reopen component of this joint motion were it demonstrated that the delay was both reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). However, upon review of all of the submissions constituting the motion we find no basis for finding that the untimely filing was either reasonable or beyond the control of the petitioner.

We issued the decision that is the subject of this motion on December 11, 2014. USCIS records demonstrate that the petitioner's motion was received by USCIS on Wednesday, January 14, 2015, or 34 days after our December 11, 2014 decision was issued. Accordingly, the motion was untimely filed.

As the record does not establish that the failure to file the motion to reopen within 33 days of the decision was reasonable and beyond the affected party's control, and as there is no such provision for motions to reconsider, the combined motion is untimely and must be dismissed for this reason.

It should be noted for the record that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider 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).

Furthermore, the motion shall be dismissed for failing to meet an applicable 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. Specifically, the regulation at 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." In this matter, the motion does not

¹ See 8 C.F.R. § 103.2(a)(1) ("every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions" and with whatever fees are required by regulation) and § 103.2(a)(6) (form instructions specify filing location).

contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Again, 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 did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Although the late filing of the joint motion requires the motion's dismissal, we shall also address in summary fashion why the joint motion would have to be dismissed even if it had been timely filed.

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a USCIS officer's authority to reopen or reconsider 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 submissions on motion must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that elects the motion(s) by checkmark at the appropriate box, is properly executed and signed, and is accompanied by a current Form G-28 if needed), but those submissions must also show a proper cause for granting the motion.

The regulation at 8 C.F.R. § 103.5(a)(2) states in pertinent part 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." It is not clear that any of the documents submitted on motion evidence new facts that would be proved if the proceeding were reopened. 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). The submissions constituting this motion do not satisfy the applicable requirements. Accordingly, the motion-to-reopen component of this joint motion would not meet applicable requirements and would have to be dismissed, even if it had not been filed late. 8 C.F.R. § 103.5(a)(4).

The provision at 8 C.F.R. § 103.5(a)(3), *Requirements for motion to reconsider*, states:

A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The provision is augmented by the instructions on the Form I-290B which state:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

The submissions on motion simply do not, as filed, establish that our decision "was incorrect based on the evidence of record at the time of the initial decision." As such, the motion-to-reconsider component of the joint motion would also have to be dismissed even if it had not been untimely filed. *See* 8 C.F.R. § 103.5(a)(4).

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 motion will be dismissed, the proceeding will not be reopened or reconsidered, and the previous decisions of the director and our office will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO, dated December 11, 2014, is affirmed. The petition is denied.