



U.S. Citizenship
and Immigration
Services

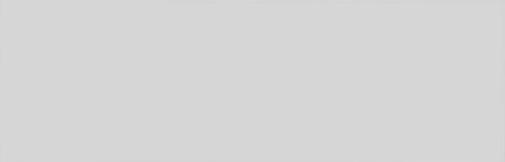
(b)(6)



DATE: **MAY 22 2015** Office: TEXAS SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner filed a motion to reopen and reconsider, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker (Form I-140), on September 19, 2013, seeking classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a chemistry researcher. At the time of filing, the petitioner was working in the Department of Chemistry at [REDACTED]. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director denied the petition on June 27, 2014, having found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. On July 31, 2014, the petitioner filed a motion to reopen and reconsider the decision, which the director dismissed as untimely in the decision dated October 28, 2014.¹ The petitioner has appealed the director's dismissal of the untimely motion.

The present appeal is limited to addressing the elements contained within the director's latest decision. Accordingly, we will only consider arguments and evidence relating to the grounds underlying the director's October 28, 2014, decision.

On appeal, the petitioner states:

The denial of the Motion to Reopen and Reconsider was based . . . on the fact the Motion to Reopen was filed one (1) day beyond the 33-day period for filing. While the Petitioner recognizes that the Motion was filed one (1) day late, the Petitioner respectfully requests now that the Service exercise its discretion to reopen and reconsider because the delay in filing was beyond the Petitioner's control. A letter from Dr. [REDACTED] Ph.D, which was absolutely essential for the Petitioner's Motion to Reopen, was not available to the Petitioner from Dr. [REDACTED]. The Petitioner and her counsel had no choice but to wait for the letter, even though it meant filing the Motion to Reopen one (1) day late. The exercise of discretion due to such extenuation circumstance is within the authority given to the Service; and discretion should have been exercised, especially considering the very slight nature for the delay in the filing

As it relates to motions to reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that "failure to file before this period expires, may be excused in the discretion of the Service where it is

¹ The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the petitioner must file the motion within 30 days of the decision. If the decision was mailed, the motion must be filed within 33 days. See 8 C.F.R. § 103.8(b). The record indicates that the director issued the decision denying the petition on June 27, 2014. The director properly gave notice to the petitioner that she had 33 days to file a motion. The Form I-290B, Notice of Appeal or Motion (Form I-290B), was received by U.S. Citizenship and Immigration Services (USCIS) on July 31, 2014, or 34 days after the decision was issued. Accordingly, the motion was untimely filed.

demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.” The petitioner asserts that the delay in filing the motion to reopen was a result of her waiting for a letter of support from Dr. [REDACTED] Assistant Professor, Department of Engineering, [REDACTED] Dr. [REDACTED] letter, however, was not submitted with the petitioner’s motion that was filed on July 31, 2014, or listed among the evidentiary exhibits in the accompanying brief. Accordingly, the assertion that the petitioner “had no choice but to wait for the letter, even though it meant filing the Motion to Reopen one (1) day late” is not supported by the documentation of record. Furthermore, as the letter from Dr. [REDACTED] now submitted on appeal is dated July 27, 2014, three days before the motion was signed by counsel, the petitioner has not shown that the delay in filing the motion was attributable to waiting for the letter’s completion. Regardless, the absence of Dr. [REDACTED] letter did not form the director’s basis for denial and the record reflects that the petitioner previously submitted multiple other reference letters throughout these proceedings. For example, the petitioner submitted three separate letters from Dr. [REDACTED] Assistant Professor, Department of Chemistry, [REDACTED] when filing the I-140 petition, in a timely response to the director’s request for evidence, and in support of the motion. For the aforementioned reasons, the petitioner has not shown that the delay resulting from her obtaining an additional reference letter from another colleague at [REDACTED] was reasonable and beyond her control.

In this matter, the petitioner’s motion was not properly filed within the required period and she has not demonstrated that the delay was reasonable and beyond her control. The petitioner, on appeal, goes on to challenge the elements of the director’s denial decision dated June 27, 2014. The matter on appeal, however, is not the June 2014 denial of the petition, but the October 28, 2014, dismissal of the motion. The petitioner must overcome the October 2014 dismissal of the motion before we will revisit the merits of any earlier decision. For example, if the petitioner had shown that the motion was timely filed, and that the director erred in dismissing the motion, then there would be a proper basis for withdrawing the director’s latest decision. The petitioner has not done so in this proceeding. The petitioner has not submitted any evidence showing that the director should not have dismissed the untimely motion, and we will not, at this late date, entertain the petitioner’s arguments pertaining to the director’s earlier decision dated June 27, 2014.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). Because the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in the director’s last decision, counsel has specified no acceptable basis for the appeal and we must summarily dismiss the appeal.

ORDER: The appeal is dismissed.