



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

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

MATTER OF V-S-G-, INC.

DATE: APR. 15, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner sought to employ the Beneficiary as a software engineer. It requested classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Petitioner filed the Form I-140 petition on September 26, 2006. The Director of the Nebraska Service Center approved the petition on November 21, 2006. The Director subsequently sent the Petitioner a notice of intent to revoke (NOIR) the petition's approval, and on October 19, 2012, the Director revoked the petition's approval due to the Petitioner's failure to respond to the NOIR.

The Director later vacated the October 19, 2012, decision and certified the case to us. We remanded the petition to the Director for continued review and processing. The Director subsequently issued a NOIR to the Petitioner and the Beneficiary, and on February 28, 2017, the Director revoked the approval of the petition and invalidated the ETA Form 9089, Application for Permanent Employment Certification, after receiving no response to the NOIR. The Beneficiary filed a motion to reopen and motion to reconsider; the Director granted the motion; and on October 30, 2017, she affirmed the February 28, 2017, decision revoking the approval of the petition and invalidating the labor certification application. We dismissed a subsequent appeal on November 15, 2018. The matter is now before us on a motion to reopen and a motion to reconsider.¹

Upon review, we will deny the motion to reopen and motion to reconsider.

I. MOTION REQUIREMENTS

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

¹ The Beneficiary checked box 1.d. at Part 2 of the Form I-290B, Notice of Appeal or Motion, indicating that she was filing a motion to reopen. However, in the brief submitted on motion, the Beneficiary states that she is filing a "motion to reconsider and reopen," so we will consider the current filing as a motion to reopen and a motion to reconsider.

Any motion to reconsider an action by [USCIS]... must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before [USCIS]... 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 [USCIS] where it is demonstrated that the delay was reasonable and was beyond the control of the [movant].

If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b).

II. ANALYSIS

A. Late Motions

We issued our appeal decision to the Beneficiary at her address of record on November 15, 2018. On the same date, we also sent a copy of our decision to the Beneficiary's attorney of record. Our decision included notice that the Beneficiary could file a motion within 30 days of the decision date. We received the Beneficiary's Form I-290B via UPS on Wednesday, December 19, 2018, 34 days after the decision was issued. The Beneficiary failed to explain or demonstrate why the delay in filing was reasonable and beyond her control. Therefore, the motions must be denied for this reason.

B. Motions Do Not Address All Grounds for Dismissal of the Appeal

Even if the Beneficiary's motions had not been late, it would still be denied because it did not address all of the issues outlined in our November 15, 2018, appeal decision. In that decision, we found that the Director properly revoked the approval of the petition because the job offer portion of the labor certification does not demonstrate that the position requires a professional holding an advanced degree or the equivalent; the Beneficiary does not meet the requirements for the offered job; the Beneficiary does not qualify as a member of the professions holding an advanced degree; the Petitioner did not have the ability to pay the proffered wage from the priority date (reserved); the Petitioner did not intend to employ the Beneficiary at the location listed on the labor certification and petition; and the petition's approval was automatically revoked pursuant to 8 C.F.R. § 205.1(a)(3)(iii)(A), based on the invalidation of the labor certification filed in support of the petition. We further concluded that the Director properly invalidated the labor certification based on the willful misrepresentations of the Beneficiary and the Petitioner relating to the Beneficiary's major field of study and experience, and the Petitioner's willful misrepresentation of the offered job's primary worksite. Finally, we noted that the petition's approval was also automatically revoked because of the Petitioner's business termination.

In her brief submitted on motion to reopen, the Beneficiary only addressed the automatic revocation of the petition's approval and the Beneficiary's major field of study and experience requirements for the offered job. In support of her motion to reconsider, the Beneficiary argued that the revocation of the petition's approval is "void;" that we failed to consider the Beneficiary's employment with the Petitioner when determining the Beneficiary's qualifications for the offered job; and that the Beneficiary corroborated the death of her former employer and, due to his death, she was unable to

Matter of V-S-G-, Inc.

resolve the discrepancies in her employment with that employer. She does not address any of the other grounds for dismissal of the appeal. When a party fails to offer an argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (concluding that plaintiff’s claims were abandoned when not raised on appeal to the AAO). Therefore, even if the Beneficiary had filed a timely motion to reopen and motion to reconsider, her motions would be denied.

III. CONCLUSION

The motion to reopen and motion to reconsider will be denied for the above stated reasons, with each considered an independent and alternative basis for the decision. The burden of proof to establish eligibility for the benefit sought remains with the petitioner in revocation proceedings. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); and *Matter of Estime*, 19 I&N Dec. 450, 452, n.1 (BIA 1987). The Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of V-S-G-, Inc.*, ID# 3850805 (AAO Apr. 15, 2019)