



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

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

MATTER OF D-E-N-J-

DATE: SEPT. 18, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129F, PETITION FOR ALIEN FIANCÉ(E)

The Petitioner, a citizen of the United States, seeks to classify the Beneficiary as the K-3 spouse of a U.S. citizen. *See* Section 101(a)(15)(K)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K)(ii). The Director, Vermont Service Center denied the petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motions are denied.

We find that the Petitioner has not filed a proper motion to reopen or a motion to reconsider. The Form I-290B, Notice of Appeal or Motion, was not accompanied by any new evidence or arguments based on precedent decisions. The Petitioner requested an additional thirty (30) days in which to file a brief in support of the motion due to counsel's pre-planned family vacation from December 29, 2014, to January 4, 2015, and requested, as a preliminary matter, that our office to reopen and reconsider the case based on misapplication of the Adam Walsh Act. To date, more than eight (8) months after our decision, we have not received any further correspondence.

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." In this matter, the Petitioner presents no new facts or evidence on motion that could be considered a proper basis for a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(3) provides 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision." The motion to reconsider is not supported by any precedent decisions establishing that our previous decision dismissing the appeal was incorrect. We find that the Petitioner has not filed a proper motion to reconsider.

Therefore, because the instant motions did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a), they must also be denied for this reason.

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The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner has not sustained that burden. Accordingly, the motions will be denied, the proceedings will not be reopened or reconsidered, and our previous decision and the decision of the Director will not be disturbed.

ORDER: The motions are denied.

Cite as *Matter of D-E-N-J-*, ID# 13575 (AAO Sept. 18, 2015)