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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 00 279 52740 Office: Vermont Service Center

Date: JAN 31 2003

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen 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 beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Vermont Service Center. The director's decision denying the petition was affirmed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed, the previous decisions of the director and the Associate Commissioner will be affirmed, and the petition will remain denied.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a specialty cook. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition. The Associate Commissioner affirmed this determination, dismissing the appeal.

On motion, counsel states:

We are writing this letter with reference to your letter dated June 2, 2000, which was denial (sic) of the appeal. The petitioner did presented (sic) various documents which clearly shows (sic) that the petitioner has ability (sic) to pay the proffered wages to the beneficiary(.) (W)e hope all the documents which was (sic) presented shows (sic) that the petitioner has ability (sic) to pay the proffered wages.

Counsel submitted no evidence and cited no precedent decisions in support of the motion.

8 C.F.R. 103.5(a) states, in pertinent part:

(2) *Requirements for a motion to reopen.* 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.

(3) *Requirements for motion to reconsider.* 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.

(4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed.

In this instance, as counsel does not state any new facts supported by documentary evidence, the motion does not meet the requirements for a motion to reopen.

Further, counsel does not submit any precedent decisions to establish that the decision of denial was incorrect based on the evidence of record at the time that decision was rendered. As such, the motion does not meet the requirements for a motion to reconsider.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Counsel has neither provided any precedent decisions to demonstrate that the prior decision by the Associate Commissioner was incorrect based on the evidence of record at the time of the initial decision, nor has counsel provided any new evidence.

Accordingly, the motion will be dismissed, and the previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed. The Associate Commissioner's decision of June 2, 2002 is affirmed. The petition remains denied.