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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

BG



FILE: [REDACTED]  
EAC-98-161-51709

Office: VERMONT SERVICE CENTER

Date: FEB 02 2005

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

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and two subsequent motions. The matter is again before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is a restaurant that seeks to employ the beneficiary as a cook. The director denied the petition on the basis that the petitioner failed to prove its continuing ability to pay the proffered wage beginning on the priority date. The AAO affirmed the director's decision in its three subsequent decisions.

On motion, the petitioner states that the Department of Labor approved the underlying alien labor certification application filed on Form ETA 750 in connection with this petition. The petitioner also states that they only offer 10 months of employment per year because its restaurant has been established for 15 years, is located in an area where many Italian families used to live but are still clients, and during the summer months, it only requires one employee.

The petitioner's submission of additional evidence does not satisfy the requirements of a motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, the petitioner's statements do not provide any regulatory-prescribed evidence requested in prior proceedings necessary as initial evidence to prove a petitioning entity's continuing ability to pay the proffered wage beginning on the priority date. The petitioner's statements do not provide a relevant connection to its continuing ability to pay the proffered wage beginning on the priority date. The AAO is aware that a certified ETA 750 is in the record of proceeding. Its prior decisions discussed that fact as well as the requirements for proving a case in an employment-based preference petition such as that in the instant proceeding. As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must have been previously unavailable and could not have been discovered earlier in the proceedings. *See* 8 C.F.R. § 3.2(c)(1). Here, no evidence in the motion contains new facts that were previously unavailable. The petitioner does not explain why it discusses its monthly schedule and the relevance and importance of bringing such facts to light at this point in the proceedings upon its continuing ability to pay the proffered wage beginning on the priority date. The facts of its date of establishment and location were already in the record of proceeding.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion is dismissed. The previous decision of the AAO, dated January 17, 2002, is affirmed. The petition is denied.