

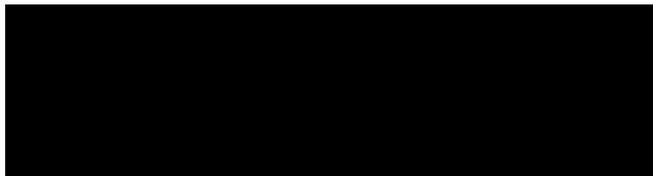
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
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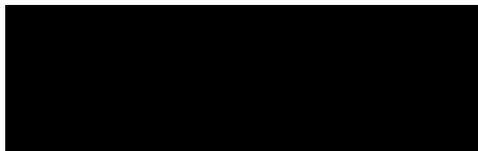
FILE: [Redacted] Office: VERMONT SERVICE CENTER
EAC 00 012 51681

Date: JUN 09 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:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center on April 5, 2001. The Administrative Appeals Office (AAO) summarily dismissed petitioner's appeal of the denial on June 19, 2002, as petitioner made no specific allegation of error or submissions from the petitioner in support of the appeal. Petitioner then filed a motion to reconsider. The motion was granted, and, the previous decisions of the director and AAO were affirmed on August 12, 2003. The matter is now before the Administrative Appeals Office (AAO) on a second motion to reconsider received on September 11, 2003. The motion will be denied.

The petitioner is an interior/exterior wood works company. It seeks classification of the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3), and, it seeks to employ the beneficiary permanently in the United States as a custom cabinet maker (furniture). The director determined that the petitioner had not established that petitioner had the ability to pay the beneficiary on the priority date of the visa petition and denied the petition accordingly.

The regulation at 8 C.F.R. § 103.5(A)(3) states:

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.

The motion does not qualify as a motion to reconsider because counsel fails to identify any erroneous conclusion of incorrect application of law or Service policy, and, counsel asserts no precedent decisions for any position. There was no brief¹ in the matter. Petitioner's counsel motion to reconsider states:

"PLEASE BE ADVISED that we submitting the above captioned Motion to Reconsider pursuant to 8 CFR §103.5 based on our belief that the law was inappropriately applied and the analysis used in reading the decision was inconsistent with the information provided and precedent decision.

I am referring to a letter² of [REDACTED] Comptroller of Kar-Fifth Corp. and where he has briefing discussed the issues concerning this matter"

The decision of the director dated April 5, 2001, stated that the petitioner had not submitted evidence at that time to demonstrate it had sufficient income to pay the beneficiary on the priority date of the labor certification. Petitioner's present motion to reconsider fails because it has not come forward with substantive evidence that the

¹ Counsel requested until October 15, 2003, to "... submit additional information in support of this motion." As of the date of this Decision no additional information was received.

² The letter states: "This is to confirm that during the years 2000-2003 inclusive, [the beneficiary] ... has been employed by both [REDACTED] and [REDACTED] at various times. The EIN # for [REDACTED] is ... [numeral deleted for confidentiality purposes]. You will find that the greater part of his remuneration would have come from [REDACTED]. In addition, there were numerous misstatements concerning payroll on tax returns ... " There is no evidence submitted to support this second Motion to Reconsider to indicate what the alleged misstatements were or whom made the misstatements.

director's decision was incorrect based on the evidence of record at the time of the initial decision, and, because petitioner has failed to provide additional evidence as indicated in its motion. The regulations do not allow an applicant or petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Petitioner has the burden in these proceedings of coming forward and presenting evidence responsive to the question of whether or not petitioner on the priority date of the alien labor application had the ability to pay the beneficiary the proffered wage. The petitioner has not come forward with evidence. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the motion will be denied, the decision of the director will be affirmed, and the petition will remain denied

ORDER: The motion to reconsider is denied.