



U.S. Citizenship
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Office: VERMONT SERVICE CENTER

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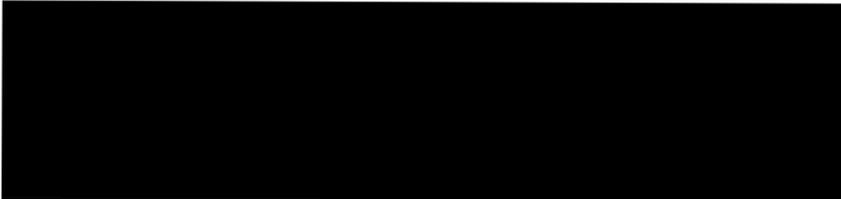
Petitioner:

Beneficiary:



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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Vermont Service Center. On further review of the record in connection with the beneficiary's Form 751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The appeal was dismissed by the Administrative Appeals Office (AAO). The subsequent motion to reopen was granted but the previous decision of the AAO on the appeal was affirmed. The matter is now before the AAO again on a motion to reconsider. The motion to reconsider will be dismissed.

The instant motion was filed on September 21, 2006 through counsel for the petitioner. Counsel submitted a Form G-28, Entry of Appearance as Attorney or Representative, properly executed by counsel and the representative of the petitioner, a cover letter dated September 20, 2006 from counsel, a copy of the AAO's August 22, 2006 decision, a motion for further reconsideration dated September 20, 2006 from [REDACTED] the beneficiary, but signed by counsel, and an affidavit of the beneficiary. Citizenship and Immigration Services' (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a motion to reopen or reconsider. 8 C.F.R. §§ 103.3(a)(1)(iii)(B) and 103.5(a)(1)(i). Although the motion for further reconsideration is from the beneficiary, the AAO will consider that it is submitted by the petitioner or its representative since the record contains Form G-28 signed by both counsel and the petitioner's authorized representative and the motion for further reconsideration was signed by the petitioner's counsel.

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). 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. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner is a driving school. It seeks to employ the beneficiary permanently in the United States as a manager. The director revoked the approval of the instant immigrant petition pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c) because the record shows that a family-based immigrant petition had been denied based on a written request of the sponsor and on a failure of the beneficiary to establish that his marriage was not entered into solely in order to procure immigration benefits. On August 22, 2006, the AAO affirmed its prior decision dismissing the appeal of revoking the approval of the petition because the evidence in the record contained substantial and probative evidence that the beneficiary's marriage to [REDACTED] was entered into for the sole purpose of evading immigration laws. The AAO noted in that decision that the inconsistencies in the record and the explicit written statements of the beneficiary's wife made on September 22, 1992 are significant evidence.

In the instant motion, counsel states that: "The stated basis for the denial indicated generally that there were inconsistencies in the record with regard to the explicit written statements between the beneficiary and the beneficiary's former wife. The beneficiary is submitting an affidavit to further clarify that there were no real inconsistencies. He is also in the process of obtaining an affidavit from his former wife to support that assertion." Counsel submits the affidavit of the beneficiary to support the motion. However, the record does not contain any affidavit or statement from the beneficiary's former wife as indicated in the motion and the beneficiary's affidavit.

The AAO noted that the beneficiary's affidavits submitted in the record attempt to provide explanations for his former wife's adverse statements made on September 22, 1992, but his information is based entirely on what his former wife told him about what took place during her portion of the interview on September 22, 1992. The beneficiary's September 20, 2006 affidavit submitted in the instant motion begins with that:

I am the beneficiary of the Form I-140, filed by the petitioner. I spoke today with my former wife, [REDACTED] who is a citizen of the United States. I am submitting this affidavit in furtherance of a Motion to[sic] for Further Reconsideration of the decision of the [AAO] entered on August 22, 2006. I am submitting this affidavit to clarify what was presented in documentary format as well as what was stated during interviews with respect to the Immediate Relative Petition [Form I-130], Application for Adjustment of Status [Form I-485], and Petition to Remove conditions on Residence [Form I-751], filed by [REDACTED] and myself. I spoke with my former wife and she is preparing an affidavit to verify the following information which I am now providing.

Like the beneficiary's affidavits previously submitted in the record, the beneficiary's September 20, 2006 affidavit also attempts to provide explanations for his former wife's adverse statements made on September 22, 1992. The beneficiary is not in the position to explain, interpret or convert his former wife's adverse statements. Most information the beneficiary provided in his affidavit is based on the alleged conversation with his former wife. However, neither counsel nor the beneficiary provides an affidavit from the beneficiary's former wife. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."

The content of counsel's motion does not satisfy the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2) because the petitioner is not providing new facts with supporting documentation not previously submitted. The content of counsel's motion does not satisfy the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3) because counsel fails to assert that the AAO made an erroneous decision through misapplication of law or policy.

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 August 22, 2006, is affirmed. The approval of the petition remains revoked.