U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 2 3 2014 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based petition was denied by the Director, Texas Service Center (director). The petitioner appealed the denial to the Administrative Appeals Office (AAO), and, on March 15, 2012, we dismissed the petitioner's appeal.[1] Counsel to the petitioner filed a motion to reopen our decision to dismiss the appeal. We dismissed the motion on January 24, 2013. The matter is now before us on a second motion to reopen. We will dismiss the motion.

The petitioner describes itself as an IT consulting business. It seeks to employ the beneficiary as a software engineer. It requests classification of the beneficiary as an alien holding an advanced degree pursuant to Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The director determined that the petitioner failed to establish that it had the continuing ability to pay the proffered wage of $76,960 per year. The petitioner filed an appeal on March 7, 2008, indicating that a brief and/or additional evidence would be provided within thirty (30) days. We rendered a decision on March 15, 2012, noting that we had received neither a brief nor additional evidence.

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

We dismissed the appeal based on the petitioner's failure to establish its continuing ability to pay the proffered wage, concurring with the director's conclusion. We noted that the petitioner had filed at least 185 petitions since 2004 with 21 of those being Form I-140 immigrant petitions and the remaining being Form I-129 non-immigrant petitions. We additionally stated:

> Where a petitioner files on behalf of multiple beneficiaries, it has the burden to demonstrate that it can pay the respective proffered wages to each sponsored beneficiary from each I-140 beneficiary's priority date until each beneficiary obtains permanent residence. It is additionally noted that the petitioner would also be obligated to pay each H-1B beneficiary the prevailing wage in accordance with DOL regulations, and the labor condition application certified with each H-1B petition. *See* 20 C.F.R. § 655.715. Each petition must conform to the requirements of 8 C.F.R. § 204.5(g)(2) and be supported by pertinent financial documentation. The petitioner must establish that its ETA Form 9089 job offer to a beneficiary is a realistic one for each beneficiary that it has sponsored and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence.

Following a review of the evidence, we determined that the petitioner had failed to establish its continuing ability to pay the proffered wage. Additionally, beyond the decision of the director, we found that the beneficiary's educational credentials did not meet the requirements for a visa

[1] Instructions to filing the Notice of Appeal or Motion (Form I-1290B) clearly provide that a brief may accompany the appeal or should be sent directly to the AAO. The petitioner's Form I-290B originally filed on appeal indicated that a brief and/or additional evidence would be sent to the AAO within 30 days. As noted in our March 15, 2012, decision dismissing the appeal, no appeal brief or additional evidence was received from the petitioner within the time indicated.

classification of an advanced degree professional. For this classification, advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We concluded that the evidence did not demonstrate that the beneficiary possessed a credential from a degree-granting institution.

The petitioner filed a motion to reopen the dismissal of the appeal. On January 24, 2013, we dismissed the motion, finding that copies of the beneficiary's W-2s and copies of the petitioner's federal tax returns were submitted without explanation as to why they could not have been discovered at the time of the appeal or any time during the four years the appeal was pending. We further concluded that the petitioner had not submitted evidence that established its continuing ability to pay the proffered wage. We additionally concluded that the evidence and argument did not overcome the basis of the appeal's dismissal and dismissed the motion.

The petitioner, through counsel, has filed a second motion to reopen. Counsel submits copies of the beneficiary's W-2s (2006 to 2011) issued by the petitioner and copies of the petitioner's federal tax returns, as well as a copy of a letter, dated November 20, 2012, which discusses a line of credit issued by [redacted] on behalf of the petitioner. Counsel also submits copies of documents referencing the beneficiary's child's illness during 2011 and requesting its consideration relevant to the petitioner's ability to pay the proffered wage.

A motion to reopen is based on factual grounds and seeks a fresh determination based on newly discovered facts or a change in the petitioner's circumstances since the time of the decision. The petitioner must show that the new evidence could not have been discovered and presented at the time of the original decision, but not originating after the decision. *See INS v. Doherty*, 502 U.S 314, 323 (1992). The assertions and evidence presented on this motion either originated after our original March 15, 2012 decision or do not state grounds upon which the previous decision in response to the petitioner's first motion, should be overturned.

Additionally, with the second motion, counsel submits a copy of an educational evaluation from the American Association of Collegiate Registrars and Admissions Officers (AACRAO), dated April 12, 2012, in support of his contention that the beneficiary meets the requirements of an advanced degree professional. This does not, however, overcome the grounds of dismissal of the appeal or provide evidence sufficient to overcome the dismissal of counsel's first motion. We acknowledged AACRAO's opinion set forth on its Electronic Database for Global Education (EDGE) in our decision of March 15, 2012, in that passage of Section A & B examinations and Associate Membership in the Institution of Engineers is considered comparable to a U.S. bachelor's degree. However, as noted above, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record

showing the date the baccalaureate degree was awarded and the area of concentration of study."[2] The is not a degree-granting institution. Therefore, for this visa classification, we cannot conclude that the beneficiary possesses a Bachelor's of Engineering degree as required by the labor certification.

We do not find counsel's assertions on motion sufficient to overcome the grounds for dismissal of our previous decision of January 24, 2013 in response to the first motion to reopen. Based on the foregoing, we reaffirm our previous dismissal of the petitioner's motion on January 24, 2013.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty,* 502 U.S. 314, 323 (1992)(citing *INS v. Abudu,* 485 U.S. 94 (1988). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motions, the movant has not met that burden. The motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden. Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of March 15, 2012 is affirmed. The petition remains denied.

[2]The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree."