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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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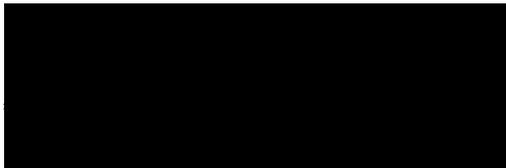
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FILE: WAC 02 073 52148 Office: CALIFORNIA SERVICE CENTER Date: 11/19/2005

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, Director
Administrative Appeals Office

DISCUSSION: The director denied the preference visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The AAO dismissed the appeal on December 16, 2003. In the dismissal of the petitioner's appeal, the AAO stated that although the petitioner appeared to have sufficient funds to establish its ability to pay the proffered salary from 1997 to the present, based on its negative gross income in 1996, the petitioner had not established this ability as of the priority date, namely, November 19, 1996. On January 16, 2004, Citizenship and Immigration Services (CIS) received a letter from the attorney of record asking that new evidence be considered so that the previous CIS decision could be reconsidered. Counsel stated that the new evidence was proof of the beneficiary's wages of \$10,070 in 1996. Counsel stated that the evidence was attached to his letter as Exhibit 1. However, no such exhibit or documentation as to the beneficiary's employment in 1996 is found in the record. Counsel also asserts in his letter that it is unfair that CIS would request the petitioner's ability to pay the proffered wage for the entire year of 1996.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), 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 CIS policy. In the instant petition, the petitioner has not filed a proper motion to reopen or reconsider. As stated previously, the petitioner's request was not accompanied by any new evidence. Counsel also submitted no pertinent precedent decisions to support his contention that the CIS examination of the petitioner's ability to pay the proffered wage for the entire year of 1996 was unfair.

A request for motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed. 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. The motion to reopen or reconsider the proceedings is dismissed. The director's decision shall stand.

ORDER: The motion is dismissed.