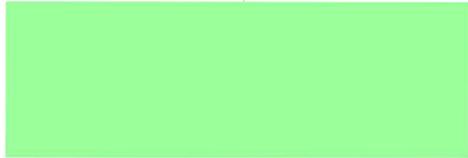




U.S. Citizenship  
and Immigration  
Services

(b)(6)



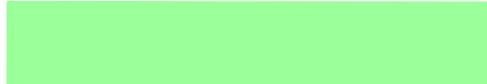
DATE: OFFICE: TEXAS SERVICE CENTER

JUN 21 2012

FILE:



IN RE: 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal. The petitioner filed a motion to reopen and reconsider the AAO decision. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the director's denial will remain undisturbed.

The petitioner is a construction contractor. It seeks to employ the beneficiary permanently in the United States as a carpenter. The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor (DOL).

The director's decision denying the petition concluded that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. On appeal, the AAO's decision dismissing the appeal also concluded that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage.

On December 15, 2008, the petitioner filed a motion to reopen and a motion to reconsider the AAO's decision.

At issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

A motion to reopen must state the new facts to be provided 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. 8 C.F.R. § 103.5(a)(3). Motions to reopen and reconsider must state whether the unfavorable decision has been or is the subject of any judicial proceeding. 8 C.F.R. § 103.5(a)(1)(ii)(C).

On motion, the petitioner submitted evidence of the existence of a letter of credit from [REDACTED] since 2000. The motion does not state the reasons for reconsideration and is not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. The motion does not state the "new facts" supported by affidavits or other documentary evidence.<sup>1</sup> The motion does not state whether the unfavorable decision has been or is the subject of any judicial proceeding. Therefore, the motion cannot be granted.

Even if the motion were granted, the AAO's prior decision would have been affirmed. The AAO's decision states:

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<sup>1</sup> Based on the plain meaning of "new," a "new fact" is evidence that was not available and could not have been discovered or presented in the previous proceeding. The word "new" is defined as "having existed or been made for only a short time" or "[j]ust discovered, found, or learned." *Webster's II New Riverside University Dictionary* (Riverside, 1984).

[T]he petitioner's existent loans will be reflected in the balance sheet provided in the tax return or audited financial statement and will be fully considered in the evaluation of the petitioner's net current assets. Comparable to the limit on a credit card, the line of credit cannot be treated as cash or as a cash asset. However, if the petitioner wishes to rely on a line of credit as evidence of ability to pay, the petitioner must submit documentary evidence, such as a detailed business plan and audited cash flow statements, to demonstrate that the line of credit will augment and not weaken its overall financial position. Finally, [US]CIS will give less weight to loans and debt as a means of paying salary since the debts will increase the petitioner's liabilities and will not improve its overall financial position. Although lines of credit and debt are an integral part of any business operation, USCIS must evaluate the overall financial position of a petitioner to determine whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977).

The documentation submitted on motion consisted solely of a letter dated December 11, 2008 from [REDACTED] Senior Vice President of [REDACTED]. In the letter, [REDACTED] states that the owner of the petitioner has banked with him since 2000 and that the petitioner has a line of credit "which supports construction projects by financing accounts receivable and inventory." [REDACTED] also states that the line of credit is reviewed annually after receiving the petitioner's federal tax returns. Finally, [REDACTED] states that the expiry of the current line of credit is April 25, 2009 and that, absent any adverse information, he expects that the line of credit will be renewed "for another comparable period."

Although [REDACTED] indicates that the owner of the petitioner has banked with him since 2000, the letter from does not provide a time period for the line of credit. He simply states the line of credit is annually reviewed. [REDACTED] letter does not provide information regarding the limit of the line of credit or the petitioner's historical balances. Thus, the letter from [REDACTED] falls short of counsel's stated purpose of the letter. Moreover, simply submitting a letter from a bank confirming that the petitioner maintains a line of credit does not address the AAO's principle question regarding how a line of credit augments, rather than weakens, the petitioner's overall financial position. Evidence such as a detailed business plan or audited cash flow statements was not submitted on motion. Therefore, even if granted, the petitioner's motion would have been dismissed.

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.

**ORDER:** The motion to reopen and reconsider is dismissed. The AAO decision dated November 13, 2008 is affirmed. The petition remains denied.