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

[redacted]

DATE: AUG 30 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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 preference visa petition was initially approved by the Director, Nebraska Service Center. In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Form I-140, Immigrant Petition for Alien Worker. The petitioner appealed this revocation to the Administrative Appeals Office (AAO), and, on May 7, 2013, the AAO dismissed the appeal. The petitioner subsequently filed a motion to reconsider. The motion will be dismissed and the petition remains revoked.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner is a travel agency. It seeks to employ the beneficiary permanently in the United States as a travel agency manager. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined 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. The director revoked the approval of the petition accordingly on January 5, 2010. The petitioner submitted a timely appeal to the revocation of the petition that was subsequently dismissed by the AAO on May 7, 2013. The AAO affirmed the decision of the director to revoke the approval of the petition and dismissed the appeal finding that 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.

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 USCIS policy. 8 C.F.R. § 103.5(a)(3). In addition, a motion to reconsider must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In the instant case, counsel alleges that the AAO erred in not determining that the petitioner had the ability to pay the proffered wage to the instant beneficiary and all beneficiaries for which it had filed immigrant visas. In his brief, counsel does not disagree with the AAO's calculation of the petitioner's net income or net current assets for 2001 to 2004. Counsel lists the petitioner's net current assets for 2005 and 2006 but provides no tax returns or annual reports to support these figures. 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).

On motion, as on appeal, counsel states that in its January 5, 2010 revocation, the director calculated the total proffered wages of the petitions for its I-140 beneficiaries as $346,465. As stated in the AAO's dismissal decision, counsel misreads the director's decision. In her decision, the director

listed the proffered wages of four petitions filed by the petitioner. The director noted that the total of these four proffered wages is $286,811. Moreover, the director also noted that USCIS is aware of other beneficiaries that are not included in this calculation. Therefore, the petitioner must demonstrate its ability to pay all proffered wages, which is *at least* $286,811. In the dismissal of the appeal, the AAO noted at least 20 immigrant petitions and at least 43 non-immigrant petitions filed by the petitioner since 1995. Counsel does not address this calculation on motion. Rather, counsel states that the USCIS found only the petitions noted by the director in the January 5, 2010 revocation. This conclusion is an error and without support. The director specifically noted in the revocation that "USCIS is aware of other I-140 beneficiaries who have been petitioned for but are not included in the calculation."

Counsel asserts on motion that even if the petitioner's tax returns do not reflect its ability to pay the proffered wage in 2001, the AAO erred in failing to consider the totality of the circumstances pursuant to *Matter of Sonegawa,* 12 I&N Dec. 612 (Reg'l Comm'r 1967).

On motion, as on appeal, counsel contends that the business was established in 1995 and suffered an industry related loss in response to the September 11, 2001 attacks. Counsel states that despite these setbacks, the petitioner has continuously grown since 2001 and that it has received airline company awards which reflect its reputation in the travel industry. As stated in the AAO's dismissal of the appeal, the gross sales amounts reflected on the petitioner's tax records do not reflect a steady increase over the years. The petitioner's 2003 tax returns show total salaries and wages paid of less than the $286,811 minimum amount calculated with a sample size of only four employees. The AAO fully addressed the totality of the circumstances in the dismissal of the appeal and applied *Matter of Sonegawa.* Counsel does not allege any specific error with the AAO's analysis, but merely disagrees with its conclusion. Counsel also fails to address any of the AAO's statements regarding the petitioner's gross sales or wages paid, as reflected on the petitioner's tax returns.

Finally, counsel alleges on motion that the AAO erred in failing to consider that the petitioner's due process rights were violated. This was also fully addressed and considered by the AAO in its dismissal of the appeal.

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 motion, the movant has not met that burden. The motion will be dismissed.

ORDER: The motion to reconsider is dismissed. The prior decision of the AAO dismissing the appeal shall be affirmed. The revocation of the petition is undisturbed.