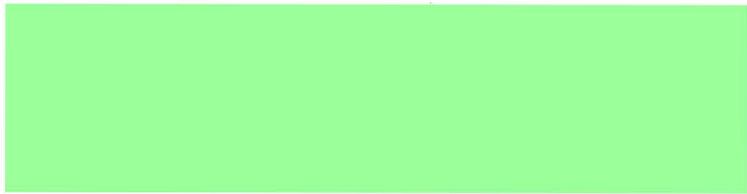


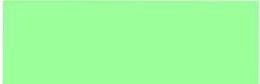


(b)(6)

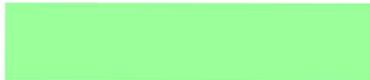


Date: JUL 25 2013

Office: TEXAS SERVICE CENTER

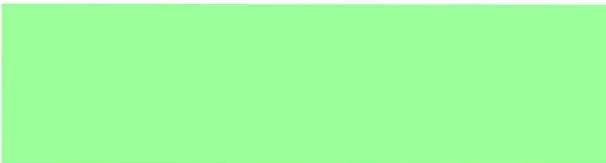
FILE: 

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 (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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal (June 1, 2012). The petitioner filed a motion to reopen the AAO's decision of June 1, 2012. On April 16, 2013, the AAO dismissed the petitioner's motion to reopen and affirmed its decision of June 1, 2012. The matter is again before the AAO on motion to reopen. The motion to reopen will be denied. The petition remains denied. The AAO affirms its decisions of June 1, 2012 and of April 16, 2013.

The petitioner is a fish wholesaler. It seeks to employ the beneficiary permanently in the United States as a fish cleaner-cutter. As required by statute, the petition is accompanied by a labor certification application approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the petition requires at least two years of training or experience and, therefore, that the beneficiary cannot be found qualified for classification as a skilled worker. The director also determined that the beneficiary was not qualified for the proffered position. The director denied the petition accordingly. The AAO dismissed the petitioner's appeal on the same basis (June 1, 2012) that the labor certification did not require at least two years of experience. The AAO determined that the beneficiary did have the required three months of experience. The AAO then denied the petitioner's motion to reopen (April 16, 2013) on the grounds that the petitioner failed to present new facts related to the basis of the petition's denial or the appeal's dismissal, as the evidence presented was available and could have been discovered or presented in the previous proceeding.¹ The AAO further dismissed the petitioner's motion to reopen for failing to state whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding as required by 8 C.F.R. § 103.5(a)(1)(iii)(C).

The record shows that the motion to reopen is properly filed. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The regulation at 8 C.F.R. § 103.5 provides in pertinent part that "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." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In the present motion, counsel states that the wrong classification was checked on the Form I-140 through clerical error. Counsel makes the same statements and references the same evidence for the present motion as was presented in support of the previous motion to reopen. The petitioner submitted no new evidence in support of its motion to reopen.

As noted above, 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." "New" facts are those

¹ The AAO notes that box 15 on Form ETA 750A lists the other special requirements as "must be able to lift and handle fish crates weighing up to 100 lbs. and own waterproof boots and leather support belt." Nothing shows that the beneficiary meets these requirements. Counsel failed to address this in his motion.

that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. The petitioner did not state new facts to be considered in the reopened proceeding that were not available and could not reasonably have been discovered or presented in the previous proceeding. As such the motion to reopen is denied.

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. § 103.5(a)(1)(iii) lists the filing requirements for motions to reopen. Section 103.5(a)(1)(iii)(C) requires that motions be “[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding.” In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, the motion must also be dismissed because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C),

In visa petition proceedings, the burden of proving eligibility 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 to reopen is denied. The AAO’s decisions of June 1, 2012 and April 16, 2013 are affirmed. The petition remains denied.