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: FEB 2 1 2014 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(ii)

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 Director, Texas Service Center (director), denied the employment-based immigrant visa petition and a subsequent motion to reopen and motion to reconsider was dismissed. The Administrative Appeals Office (AAO) dismissed the appeal. The matter is before the AAO on a motion to reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will be denied

The petitioner is a medical equipment distributor. It seeks to employ the beneficiary permanently in the United States as a solutions architect. As required by statute, the petition is accompanied by labor certification application approved by the United States Department of Labor (DOL). The petitioner seeks to classify the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). The director determined that the petitioner had not established that the petition requires a bachelor's degree or foreign equivalent and, therefore, that the beneficiary cannot be found qualified for classification as a professional worker. The director denied the petition accordingly. The director subsequently dismissed a motion to reopen and motion to reconsider.

The director's decision denying the petition on April 17, 2013 and dismissal of the motion to reopen on June 13, 2013, states that the petition does not require at least a bachelor's degree or foreign equivalent such that the beneficiary may be found qualified for classification as a professional worker.

On appeal, counsel asserted that the petitioner made a typographical error on Form I-140 and that the petitioner intended to check Part 2.f. indicating that it was filing the petition for a skilled worker. The AAO found that there is no provision in statute or regulation that compels United States Citizenship and Immigration Services (USCIS) to readjudicate a petition under a different visa classification in response to a petitioner's request to change it, once the decision has been rendered.

8 C.F.R. § 103.5(a) provides, in pertinent part:

> (3) *Requirements for motion to reconsider.*
> 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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On motion, counsel contends that the AAO erred in its interpretation of *Matter of Izummi* as applied to the instant case. The AAO cited to *Matter of Izummi* to find that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). On motion, counsel contends that in *Izummi* the AAO accepted Stage I amendments to a partnership agreement to conform it to the other agreements that the petitioner had originally executed and submitted with the petition, but did not accept Stage II amendments which further restructured, amended or eliminated some or all of the objected-to provisions. Counsel contends that in the instant case, the petitioner's change to fix the incorrect initial Form I-140 immigrant petitioner was made simply to

conform the Form I-140 to the labor certification and all other supporting documents filed with the Form I-140. Counsel contends that the petitioner made a single error in checking box 1.e instead of 1.f on page 1 of the Form I-140 and that such a change would represent an amendment, which conforms the Form I-140 to the other documentation filed with the Form I-140.

In reviewing the record, the labor certification was not the only incongruous document among the Form I-140 immigrant petition filing. Not only did the Form I-140 indicate that the petition was filed for a professional worker, the cover letter submitted with the filing and the petitioner's offer letter indicated that the petition was filed for and the offered position was a professional one in nature, which required the equivalent of a U.S. bachelor's degree. Further, an evaluation was submitted with the Form I-140 immigrant petition, indicating that the beneficiary's credentials and experience are equivalent to a bachelor's degree in business administration specializing in information technology in the United States. As such, counsel's contention that the AAO incorrectly applied the holding in *Izzumi* to the instant case is unpersuasive. A petitioner must establish the elements for the approval of the petition at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). In the instant case, the petitioner did not establish at the time of filing that the petition was eligible for approval under classification as a professional.

Neither the law nor the regulations require the director to consider lesser classifications if the petitioner does not establish the beneficiary's eligibility for the classification requested. We cannot conclude that the director committed reversible error by adjudicating the petition under the classification requested by the petitioner. There are no provisions permitting the petitioner to amend the petition on appeal in order to establish eligibility under a lesser classification.

While counsel states reasons for the motion, the petitioner has not established that the decision was based on an incorrect application of law or Service policy based on the evidence of record at the time of the initial decision. Accordingly, the petitioner's motion to reconsider will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reconsidered and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.