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

DATE: JAN 0 3 2014 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
Chief, Administrative Appeals Office

DISCUSSION: The employment-based visa petition was denied by the Director, Texas Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen and motion to reconsider. The motions will be dismissed. The petition will remain denied.

The petitioner describes itself as a gasoline and service station. It seeks to employ the beneficiary permanently in the United States as an auto master mechanic. 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 cited numerous discrepancies in the record of proceedings and determined that the petitioner had not established that the beneficiary possessed the necessary work experience required by the labor certification. The director also determined that the petitioner had not established that a valid job offer existed. The director also concluded that the petitioner had fraudulently submitted a false statement in order to obtain an immigration benefit. The director denied the petition accordingly.

On appeal, the AAO withdrew the director's decision and the director's finding of fraud. In its October 10, 2013, decision, the AAO dismissed the appeal because the petitioner had failed to establish that the beneficiary possessed the two years of work experience in the offered job that was required by the labor certification. Specifically, the AAO noted that the labor certification stated that the offered job required two years of experience as a "Motor Mechanic." The beneficiary indicated on the labor certification that he worked 48 hours per week as a motor mechanic for [redacted] Pakistan, from May 1989 through July 1993.[1] A July 15, 1993, employment letter on [redacted] letterhead affirms the beneficiary's employment there as a motor mechanic from May 1989 through July 1993, but does not specify the beneficiary's duties there, nor does it indicate that the beneficiary worked there full time. A July 2, 2013, letter on [redacted] letterhead described the beneficiary's duties as a motor mechanic and clarified that the beneficiary worked from 7:00AM to 1:00PM five days (30 hours) per week. In a July 15, 2013, statement, the beneficiary corrected the information on the labor certification and stated that he actually worked 25 hours per week for [redacted] In response to an AAO Notice of Intent to Dismiss (NOID) the beneficiary submitted an amended labor certification reflecting that he worked 25 hours per week for [redacted] The AAO concluded that the petitioner failed to provide independent, objective evidence of the beneficiary's work experience and that the beneficiary's claim of working 25 hours per week was inconsistent with the experience letter that claimed he worked 30 hours per week. The AAO dismissed the appeal.

The regulations at 8 C.F.R. § 103.5(a)(2) state, 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." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.[2]

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[1] The only other employment claimed by the beneficiary on the labor certification was his work as a market research analyst for [redacted], in Houston, Texas, from January 2002 through January 2005.

[2] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just

In this matter, the petitioner presented no facts or evidence on motion that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen. The evidence submitted on motion consists of the beneficiary's uncertified Pakistani income tax returns from 1991 through 1994, and a declaration signed by the beneficiary. The beneficiary's declaration is self-serving and the tax records do not provide any support to the petitioner's claim that the beneficiary has at least two years of experience as an auto mechanic. The petitioner did not submit any independent, objective evidence relating to the beneficiary's qualifying work experience. Therefore, this evidence will not be considered a proper basis for a motion to reopen.

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. 8 C.F.R. § 103.5(a)(3).

In a statement submitted on motion, the beneficiary explains why he claimed to have worked 25 hours per week for [redacted] while the employer indicated that the beneficiary worked six hours per day, five days per week. However, the petitioner has not alleged or identified any specific misapplication of law or policy by the AAO. This cannot be considered a proper basis for a motion to reconsider.

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.

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 motion to reconsider are dismissed. The petition remains denied.

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discovered, found, or learned <*new* evidence> . . . ." *Webster's II New Riverside University Dictionary* 792 (1984)(emphasis in original).