



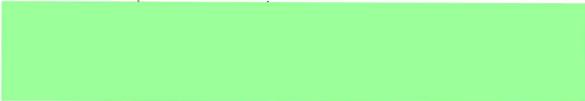
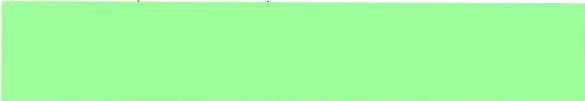
U.S. Citizenship
and Immigration
Services

(b)(6)



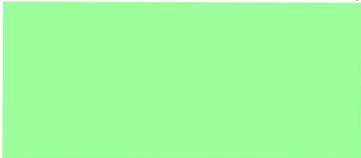
Date: **JAN 31 2013** Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Professional Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (TSC), initially denied the immigrant visa petition and then dismissed a subsequent motion to reopen/reconsider filed upon the petitioner's behalf by counsel. Counsel appealed the dismissal of the motion to the Administrative Appeals Office (AAO), and, on March 30, 2012, the AAO dismissed the appeal. Counsel subsequently filed a motion to reopen and reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be dismissed.

The petitioner is a software consulting business. It seeks to employ the beneficiary permanently in the United States as an "EDI Programmer" pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, certified by the United States Department of Labor (DOL).

The director determined that the Form ETA 750 failed to demonstrate that the job requires a professional holding an advanced degree or the equivalent of an alien of exceptional ability and, therefore, the beneficiary cannot be found qualified for classification as a member of the professions holding an advanced degree or an alien of exceptional ability. 8 C.F.R. § 204.5(k)(4). The director denied the petition accordingly on April 29, 2009, then dismissed a subsequent motion to reopen/reconsider filed upon the petitioner's behalf by counsel on July 7, 2009.

The petitioner subsequently filed an appeal to the director's dismissal of the motion to reopen/reconsider.

On March 30, 2012, the AAO dismissed the petitioner's appeal upholding the director's decision to dismiss the motion to reopen/reconsider. The reasons for the dismissal of the appeal are set forth in the AAO's decision.

Counsel subsequently filed a motion to reopen and reconsider in accordance with 8 C.F.R. § 103.5 on April 30, 2012. On motion, counsel states that he was submitting the motion based upon newly discovered facts that were not available at the time the petition was filed. Counsel claims that the individual who assisted the petitioner in preparing the Form I-140, Immigrant Petition for Alien Worker, and Form ETA 750, Padma Tata, had represented herself as an attorney when in fact she was not. Counsel requests that United States Citizenship and Immigration Services (USCIS) reopen the proceedings based upon these new facts. However, neither counsel nor the petitioner provides any evidence to corroborate the assertions put forth on motion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

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A motion to reopen must state the new facts to be proved 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 establish that the AAO's decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

As counsel fails to submit any documentary evidence to support the new facts put forth on motion as required by the regulation at 8 C.F.R. § 103.5(a)(2), the motion must be dismissed for a failure to meet applicable requirements pursuant to 8 C.F.R. § 103.5(a)(4). The motion also does not meet the requirements of a motion to reconsider.

In addition, it must be noted that the petition could not be approved even if the motion to reopen had been granted. A review of the Form I-140 petition and supporting documents reveals that the individual in question, Padma Tata, who purportedly represented herself as an attorney when in fact she was not, signed and prepared documents including the Form I-140 petition in her capacity as the petitioner's human resources manager, and not as an attorney or representative acting on behalf of the petitioner. Therefore, if the assertions of counsel on motion were to be proven true, the Form I-140 petition would be invalid and cannot be approved.

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 sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.