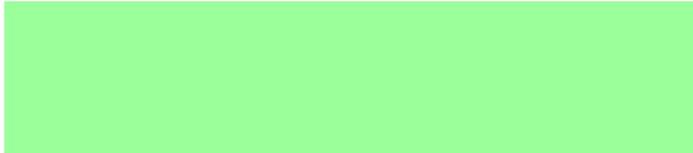




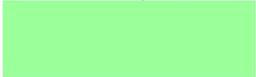
U.S. Citizenship
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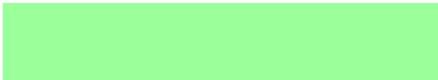


DATE: **DEC 02 2014**

OFFICE: TEXAS SERVICE CENTER

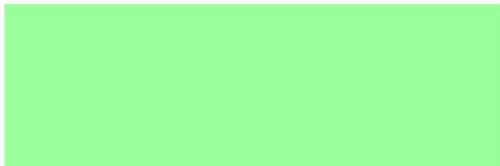
FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions 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. § 11523(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 preference visa petition was denied by the Director, Texas Service Center (the director) and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. We dismissed the petitioner's first and second motions to reopen and reconsider and affirmed our appellate decision. The matter is now before us on a third motion to reopen and motion to reconsider. The motions will be dismissed, our prior decisions will be affirmed, and the petition will remain denied.

The petitioner is an IT consulting business. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹ As required by statute, the petition is accompanied by labor certification application approved by the United States Department of Labor (DOL). The director determined that the petitioner failed to establish its ability to pay the proffered wage from the October 27, 2006 priority date onwards.² The director denied the petition accordingly.

We dismissed the petitioner's appeal on the same ground on March 15, 2012. We also concluded that the petitioner did not establish that the beneficiary possessed the minimum educational requirements as set forth on the labor certification. On January 24, 2013 and September 23, 2014, we dismissed the petitioner's motions to reopen and reconsider and affirmed our prior decisions.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon motion. On motion, counsel submits a brief, the petitioner's 2013 and 2012 Internal Revenue Service (IRS) Forms 1120S, U.S. Income Tax Return for an S Corporation, the petitioners 2013 compiled financial statements and the petitioner's unaudited accrual profit and loss statements for 2008 through 2012.

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." 8 C.F.R. § 103.5(a) provides, that "[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 submits the petitioner's 2012 and 2013 tax records with other financial documents and asserts that the petitioner has demonstrated its ability to pay the proffered wage based on its 2013 tax returns. Counsel again references the beneficiary's child's illness, requesting its consideration relevant to the petitioner's ability to pay the proffered wage.

¹ Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

² The priority date of the petition, which is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

Counsel again submits a copy of an educational evaluation of the beneficiary's credentials from the American Association of Collegiate Registrars and Admissions Officers (AACRAO), along with information on the Computer Engineering Division Board (CEDB) of the Institute of Engineers (India) (IEI) and evidence that IEI is a National Board of Accreditation (NBA) organization for the All-India Council for Technical Education (AICTE). Counsel also submits evidence that the National Recognition Information Centre for the United Kingdom (NARIC) recognizes sections A and B of the IEI as comparable to the British Bachelors (Honours) degree standard, and the Indian Institute of Technology (IIT) has admitted candidates who have passed sections A and B of the IEI to their post graduate programs. On motion, counsel states that this evidence addresses the issues raised by us regarding the beneficiary's credentials.

As discussed in our previous decision, a motion to reopen is based on factual grounds and seeks a fresh determination based on newly discovered facts or a change in the petitioner's circumstances since the time of the decision. The petitioner must show that the new evidence could not have been discovered and presented at the time of the original decision, but that the evidence did not originate after the decision. *See INS v. Doherty*, 502 U.S. 314, 323 (1992).

The assertions and evidence presented on this motion regarding the petitioner's ability to pay the proffered wage originated after our original March 15, 2012 decision and do not state grounds upon which the previous decision in response to the petitioner's second motion, should be overturned.

As discussed in our previous decision, we acknowledged AACRAO's opinion set forth on its Electronic Database for Global Education (EDGE), in that passage of Section A & B examinations and Associate Membership in the IEI is considered comparable to a U.S. bachelor's degree, but that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an *official college or university record* showing the date the baccalaureate degree was awarded and the area of concentration of study" for classification as a member of the professions [emphasis added].³ The IEI is not a degree-granting institution and, as such, we cannot conclude that the beneficiary possesses a Bachelor of Engineering degree as required by the labor certification.

Counsel does not provide any affidavits or documentary evidence to establish any new facts and 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 reopen and reconsider will be dismissed.

Motions for the reopening 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 to reopen will be dismissed.

³The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree."

(b)(6)



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. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motions will be dismissed, the proceedings will not be reopened or reconsidered and the previous decisions will not be disturbed.

ORDER: The motions are dismissed. The previous decisions of the director and the AAO are affirmed. The petition remains denied.