



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 28 2014**

OFFICE: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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. § 1153(b)(2)

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, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on November 14, 2013, the AAO dismissed the appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner describes itself as a computer software company. It seeks to permanently employ the beneficiary in the United States as a "team lead, software development." The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The director determined that the petitioner failed to demonstrate that the beneficiary had a single source degree that was equivalent to an advanced degree pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2). Beyond the decision of the director,¹ the AAO noted in its dismissal of the appeal that the petitioner failed to establish the beneficiary's qualifications for the proffered position. In its decision, the AAO noted that the petitioner did not provide evidence that the beneficiary's diploma is from a school that is accredited or that the beneficiary's degree and diploma are equivalent to a U.S. bachelor's degree in computer science or a related field. The AAO also noted that the record contains inconsistent information regarding the beneficiary's dates of employment and position with the petitioner.

On motion, counsel submits a brief, two evaluations, a letter from the petitioner, and resubmits a work experience letter for the beneficiary dated March 12, 2009.

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

In his brief, counsel states that page two of the evaluations submitted contain evidence that the [REDACTED] and that a three-year bachelor's degree is required for admission. As noted in the AAO's previous decision, some post graduate programs only require a higher secondary certificate instead of a two or three-year bachelor's degree. Although the evaluators both state that [REDACTED] requires a three-year bachelor's degree, neither evaluation provides support for this conclusion.

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

²The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . ." *Webster's II New Riverside University Dictionary* 792 (1984)(emphasis in original).

Further, neither evaluator provides a source or documentary evidence indicating that [REDACTED] was accredited at the time that the beneficiary received his diploma. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In his brief, counsel states that the evaluations submitted on motion make it "patently clear" that the beneficiary has a single-source bachelor's degree. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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).

On motion, the petitioner submitted a letter stating dated December 11, 2013 stating that it considers the beneficiary's bachelor's degree to be in a field related to computer science because the beneficiary's three-year bachelor's degree from the [REDACTED] concentrated on computer applications. A degree in computer applications has a different emphasis than that of a computer science degree. Although the petitioner now states in its letter that it accepts the beneficiary's three-year degree in computer applications as the equivalent of a bachelor's degree in computer science or a related field, the petitioner did not indicate that it would accept a degree in computer applications on the labor certification.³

The motion to reopen does not qualify for consideration under 8 C.F.R. § 103.5(a)(2) because, on motion, the petitioner does not provide new facts with supporting documentation not previously submitted. There is no evidence in the record indicating that the evidence submitted on motion could not have been submitted previously. The regulation at 8 C.F.R. § 103.5(a)(2) states, 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. 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.

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 and motions

³ In Part H, Question 7 of the Form ETA 9089, the petitioner indicated that no alternate field of study was accepted. Although Question 4-B indicates that a field related to computer science is accepted, the record does not establish that the beneficiary's three-year diploma in computer applications is a bachelor's or foreign equivalent degree in a field related to computer science. The petitioner's letter on motion also addresses the inconsistent employment information in the record. The AAO is satisfied with the petitioner's explanation regarding the beneficiary's inconsistent employment information in the record.

to reconsider. 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, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

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.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The decision of the AAO dated November 14, 2013 is affirmed. The petition remains denied.