



U.S. Citizenship
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FILE:



Office: TEXAS SERVICE CENTER

Date: **AUG 13 2009**

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IN RE:

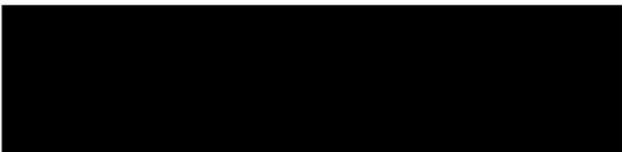
Petitioner:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed the director's decision and, on November 7, 2007, the Administrative Appeals Office (AAO) dismissed the appeal. On December 7, 2007, counsel to the petitioner 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 pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(C), 103.5(a)(2), 103.5(a)(3), and 103.5(a)(4).

The petitioner is a school. It seeks to employ the beneficiary permanently in the United States as a science and literature teacher. 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 determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly. The AAO dismissed the subsequently filed appeal, also finding that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage.

On motion, counsel to the petitioner states that the petitioner had the ability to pay the proffered wage. In support of the motion, counsel has submitted copies of the Consolidated Financial Statements for the U.S. Conference of Catholic Bishops for the years 2001, 2002 and 2003; the W-2 Wage and Tax Statement issued to the beneficiary for the year 2006; copies of pay stubs issued to the beneficiary from June to November 2007; a Statement of Activities for fiscal year 2006; employment contracts between the beneficiary and petitioner; a partial transcript from a panel discussion at the 2004 American Immigration Lawyers Association annual conference; a letter from [REDACTED], Principal of St. Rose of Lima School; and evidence regarding the tax exempt status of entities listed in The Official Catholic Directory.

Upon review, the motion shall be dismissed for failing to meet applicable requirements.

The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions 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 be dismissed for this reason.

Furthermore, upon review, the AAO will dismiss the motion for failing to meet the applicable requirements for motions to reopen set forth in 8 C.F.R. § 103.5(a)(2). "[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." *Id.* In this matter, counsel did not offer new evidence relating to the petitioner's ability to pay the proffered wage during the years 2001 through 2005. As noted above, counsel submitted copies of Consolidated Financial Statements for the U.S. Conference of Catholic Bishops (USCCB) for the years 2001, 2002 and 2003. However, counsel provided no documentation to establish that a relationship exists between the petitioner and the USCCB or, assuming a relationship does exist, that the USCCB would somehow be obligated to pay the proffered wage. The unsupported statements of counsel in a motion are not evidence

and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Accordingly, the motion does not meet the applicable requirements of a motion to reopen and must be dismissed for that reason.

Finally, the AAO will dismiss the motion for failing to meet the applicable requirements for motions to reconsider set forth in 8 C.F.R. § 103.5(a)(3). This regulation states, in pertinent part, 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 [U.S. Citizenship and Immigration Services (USCIS)] policy." *Id.* In this matter, counsel fails to cite to any precedent decisions that establish that the AAO's decision to dismiss the appeal because the petitioner failed to establish that it had the continuing ability to pay the beneficiary the proffered wage was based on an incorrect application of law or policy.

Counsel refers to statements made by William Yates, then Associate Director of Operations for USCIS, on a panel discussion at the 2004 American Immigration Lawyers Association annual conference. However, the petitioner's reliance on such statements will not support a Motion to Reconsider. Such informal statements do not constitute official USCIS policy and will not be considered as such in the adjudication of petitions.

As such, the motion does not meet the applicable requirements and must be dismissed. 8 C.F.R. § 103.5(a)(4).

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. 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.