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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



**U.S. Citizenship
and Immigration
Services**



B6

DATE: **DEC 16 2011** 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:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 August 9, 2011, the AAO dismissed the appeal. The petitioner filed a motion to reopen and a motion to reconsider the AAO's decision. The motion will be dismissed.

The petitioner is engaged in information technology and business consulting. It seeks to employ the beneficiary permanently in the United States as a management analyst specializing in the area of human resources. As required by statute, the Form I-140, Immigrant Petition for Alien Worker, is accompanied by a Form ETA 750, Parts A & B, Application for Alien Employment Certification, approved by the United States Department of Labor (USDOL). The director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The AAO affirmed this determination on appeal and also found that the petitioner had not established the continuing ability to pay the proffered wage beginning on the priority date.

A motion to reopen must state the new facts to be proved at 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 state the reason 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 ... [and] 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the petitioner updates its address information and indicates that it will take the petitioner more time to prepare a reply to the AAO determination. As such, the threshold issues on which the underlying findings were based have not been overcome or even addressed on motion. Although the petitioner has requested additional time to submit a "detailed brief and additional evidence," it is noted that the regulation pertaining to motions does not permit the submission of materials after filing in order to meet the applicable requirements. Motions must meet the applicable requirement when filed. *See* C.F.R. § 103.5; compare 8 C.F.R. 103.3(a)(2)(vii).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen and to reconsider will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed.