

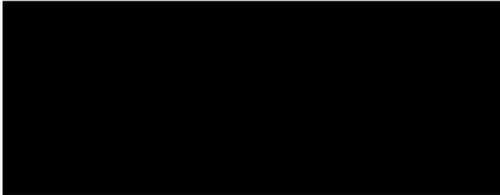
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



36

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

**MAR 15 2011**

IN RE:

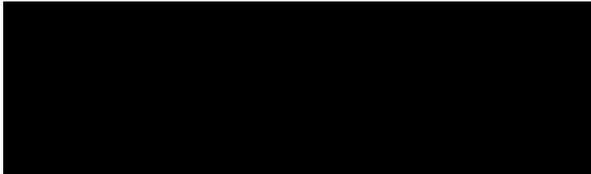
Petitioner:



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:

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, Nebraska Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on December 7, 2010, the AAO dismissed the appeal. Counsel to the petitioner filed a motion to reopen and to 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).

On January 6, 2011, counsel filed the instant motion to reopen/motion to reconsider. With the motion, the petitioner submitted an affidavit from the beneficiary and a color copy of a share certificate for [REDACTED]. Counsel did not request additional time to file additional evidence with the filing of the motion to reopen/motion to reconsider.

On February 8, 2011, counsel submitted a request for an additional 90 days to submit additional evidence. The request for additional time is denied as a matter of discretion for failure to show good cause.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

In the instant case, counsel filed the motion to reopen/motion to reconsider; however, at that time counsel did not request additional time to file additional evidence. Only one month later (approximately 60 days after the AAO's decision) does counsel request an additional 90 days to file additional evidence.<sup>1</sup> The AAO notes that the evidence counsel claims he will submit is not new evidence, but evidence that was previously requested by the director in requests for evidence and in notices of intent to deny. Further, the AAO reiterated the evidence lacking in its decision on appeal. The petitioner did not submit the evidence either in response to the director's requests or on motion. Therefore, the AAO does not find that the evidence the petitioner would submit would be new evidence, evidence that was not available and could not have been discovered or presented in the previous proceeding, and that the delay in submitting the evidence was reasonable or beyond the control of the applicant or petitioner.

The petitioner is an international trader and supplier of chemicals and hi-tech components. It seeks to employ the beneficiary permanently in the United States as a buyer. As required by statute, a Form ETA 750,<sup>2</sup> Application for Alien Employment Certification approved by the Department of Labor (the DOL), accompanied the petition. Upon reviewing the petition, the director determined that the

---

<sup>1</sup> The AAO notes that counsel has previously requested additional time to submit evidence both to the director and to the AAO. However, at least with regards to the AAO, counsel failed to submit that evidence within the additional 90 days requested by counsel.

<sup>2</sup> After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

petitioner failed to demonstrate that the beneficiary's credentials satisfied the minimum level of education stated on the labor certification. The director further determined that the petitioner had not established its continuing ability to pay the proffered wage from the priority date of April 30, 2001; that the petitioner had not established that the beneficiary met the experience requirements of the certified labor certification; and that the petitioner had not shown that the job offer to the beneficiary was a *bona fide* job offer. The director denied the visa petition accordingly, and invalidated the certified labor certification. The AAO affirmed the director's denial on appeal and concluded that the director was correct in determining that the petitioner failed to demonstrate that the beneficiary's credentials satisfied the minimum level of education stated on the labor certification; that the petitioner failed to establish its continuing ability to pay the proffered wage from the priority date of April 30, 2001; that the petitioner had not established that the beneficiary met the experience requirements of the certified labor certification; that the petitioner had not shown that the job offer to the beneficiary was a *bona fide* job offer; and that the certified labor certification should be invalidated. In its notice of dismissal of the petitioner's appeal, dated December 7, 2010, the AAO addressed each of these issues with specific detail. Therefore, the procedural history in this case is documented by the record and incorporated into the AAO's dismissal decision. Further elaboration of the procedural history will be made only as necessary.

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 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.

The regulation at 8 C.F.R. § 103.5(a)(2) states in pertinent part:

*Requirements for motion to reopen.* 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.<sup>3</sup>

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. The petitioner's motion is based entirely on another affidavit from the beneficiary that rehashes the

---

<sup>3</sup> The 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 COLLEGE DICTIONARY 753 (3d ed., Houghton Mifflin Harcourt Publishing Company 2008)(emphasis in original).

beneficiary's claims in a prior affidavit, and on a stock certificate (in color this time) that allegedly certifies that [REDACTED] is the owner of 200 shares of the petitioner. However, as discussed in the AAO's dismissal of the petitioner's appeal, the stock certificate is not evidence of the sale of the petitioner to [REDACTED]. There is no evidence of a stock ledger, amendment of incorporation, or amendment of change, in the record of proceeding. Further, as the AAO noted in its dismissal of the petitioner's appeal, the beneficiary's failure to apprise himself of the contents of the paperwork or the information being submitted constitutes deliberate avoidance and does not absolve him of responsibility for the content of his petition or the materials submitted in support. See *Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6th Cir. 2005) (unpublished) (an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application's contents). The law generally does not recognize the deliberate avoidance as a defense to misrepresentation. See *Bautista v. Star Cruises*, 396 F.3d 1289, 1301 (11th Cir. 2005); *United States v. Puente*, 982 F.2d 156, 159 (5th Cir. 1993). To allow the beneficiary to absolve himself of responsibility by simply claiming that he had no knowledge or participation in a matter where he provided all the supporting documents and signed a Form I-485 before a USCIS officer would have serious negative consequences for USCIS and the administration of the nation's immigration laws. While potentially ineligible aliens might benefit from approval of an invalid petition or application in cases where USCIS fails to identify fraud or material misrepresentations, once USCIS does identify the fraud or material misrepresentations, these same aliens would seek to avoid the negative consequences of the fraud, including denial of the petition or application, a finding of inadmissibility under section 212(a)(6)(C) of the Act, or even criminal prosecution. In the instant case, the fact that the letter, dated May 3, 2010, from the beneficiary, states he did not sign the prior G-325A and that the signature was fraudulent does not equate to the beneficiary not having attempted to gain immigration benefits through an invalid application or petition. Finally, neither of the two documents (the affidavit and the stock certificate) addresses the additional issues reflected in the AAO's dismissal of the petitioner's appeal.

Those issues include the beneficiary's lack of a Bachelor degree in Economics/International Trade; the lack of the beneficiary's transcripts from Newport University and Newport University's lack of being an accredited institution of higher learning in the United States; the lack of evidence that the beneficiary met the experience requirements of the certified labor certification at the priority date of April 30, 2001; the lack of any evidence showing that Newport University had a branch in New York City between 1991 - 1992; the lack of verifiable evidence to show the beneficiary's employment or termination with [REDACTED] Companies, Ltd. in Israel; the petitioner's lack of evidence to support its claim of its continuing ability to pay the proffered wage from the priority date of April 30, 2001; the lack of evidence to show that the position offered to the beneficiary is a *bona fide* job offer that is available to U.S. workers; the lack of evidence showing that recruitment efforts for the proffered position were consistent with the requirements of the certified labor certification; the lack of evidence showing that the beneficiary as CEO and shareholder does not have undue influence on the hiring for the proffered position; and the lack of evidence showing that the beneficiary sold the petitioner to its current owner.

In his request for additional time to submit additional evidence, counsel claims that the beneficiary is in the process of obtaining his transcripts from Newport University; that the beneficiary is in the

process of obtaining evidence that he studied at Newport University through their branch in New York City;<sup>4</sup> that the beneficiary is in the process of obtaining a new letter of experience confirming the beneficiary's experience with [REDACTED]; that the beneficiary is in the process of obtaining evidence of the petitioner's continuing ability to pay the proffered wage from the priority date of April 30, 2001; and that the beneficiary is in the process of obtaining professional forensic evidence of the beneficiary's signature. However, the AAO notes that none of the evidence counsel claims the beneficiary is in the process of obtaining would be new evidence that was not previously requested or reported in the director's decision or the AAO's decision on appeal.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

*Requirements for motion to reconsider.* 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.

Since the petitioner has not provided a reason for reconsideration supported by pertinent precedent decisions indicating that the decision was based on an incorrect application of law or USCIS policy, and has not established that the decision was incorrect based on the evidence of record at the time of the initial decision, the motion does not meet the requirements for reconsideration.

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, 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.

---

<sup>4</sup> On motion, counsel now claims that [REDACTED] was run by [REDACTED] New York City.