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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

[Redacted]

Date:

**MAY 29 2012**

Office: TEXAS SERVICE CENTER

FILE:

[Redacted]

IN RE:

Petitioner:

Beneficiary:

[Redacted]

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:

[Redacted]

**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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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:** On January 25, 2008, the preference visa petition was denied by the Director, Texas Service Center. On February 27, 2008, you appealed that decision to the Administrative Appeals Office (AAO). On April 27, 2009, the AAO dismissed your appeal. On May 29, 2009, you filed a Motion to Reconsider with the AAO. The Motion to Reconsider will be dismissed.

8 C.F.R. § 103.5(a)(3) 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 [USCIS] policy." The record shows that the Motion to Reconsider was timely filed. However, the petitioner's Motion to Reconsider is not supported by any pertinent precedent decisions which establish that the AAO's April 27, 2009 dismissal was based on incorrect application of law or policy.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a woodwork artisan. 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 AAO determined that the petitioner had not met its burden of proof in establishing its ability to pay the proffered wage as of the priority date of October 2, 2003 and continuing until the beneficiary obtains lawful permanent residence. The AAO determined the petitioner had not hired and paid the beneficiary during the relevant years; did not have sufficient net income to pay the proffered wage of \$54,184 per year for years 2003 through 2005; and did not have sufficient net current assets to pay the proffered wage in the years 2003 through 2006. The AAO also concluded that, assessing the totality of the circumstances under *Sonegawa*, the petitioner did not prove its financial strength and viability to establish its ability to pay the proffered wage. The AAO dismissed the appeal accordingly.

The AAO notes that even if the petitioner had properly filed a Motion to Reconsider, the petition would not have been approved, as the assertions of counsel and the evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date. As previously discussed in the AAO's decision dated April 27, 2009, the petitioner failed to demonstrate that it had sufficient net income or net current assets to pay the proffered wage from 2003 to 2005.<sup>1</sup> Additionally, the AAO also discussed in its prior decision that it would not consider the petitioner's corporate bank account statements in determining whether the petitioner has the ability to pay the proffered wage. Counsel asserts on motion that the year of 2003 should be prorated since the priority date is October 2, 2003, and this would prorate to 12 weeks, or a proffered wage of \$12,504 for 2003. We will not, however, consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. While USCIS will prorate the proffered wage if the

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<sup>1</sup> The petitioner submitted Counsel also submitted its 2008 federal tax return with the instant Motion to Reconsider. However, the 2008 return does not establish the petitioner had sufficient net income, or net current assets, to pay the proffered wage.

record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income statements or pay stubs, the petitioner has not submitted such evidence.

Finally, 8 C.F.R. § 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, and, if so, the court, nature, date, and status or result of the proceeding." The present Motion to Reconsider does not contain this required statement, and for this additional reason, the petitioner's Motion to Reconsider will be dismissed.

The motion will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The Motion to Reconsider is dismissed.