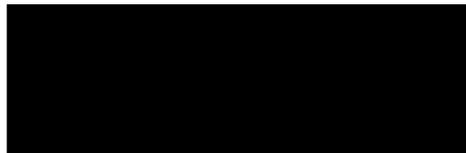


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B6



DATE: **OCT 16 2012**

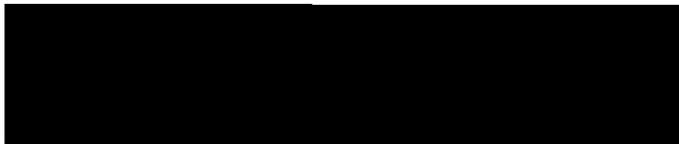
OFFICE: NEBRASKA SERVICE CENTER

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:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and motion to reconsider. The motion will be rejected, the previous decision of the AAO will be affirmed, and the petition will be denied.

The petitioner describes itself as a restaurant. It seeks to permanently employ the beneficiary in the United States as a cook. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The AAO's decision dismissing the appeal concludes that the petitioner failed to establish that [REDACTED] was a successor-in-interest and the petitioner's ability to pay the proffered wage from the priority date onwards.

The record of proceeding contains an executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for [REDACTED] representative. Additionally, the Form I-290B, Notice of Appeal or Motion, was signed by the same representative.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states that "For purposes of this section and §§ 103.4 and 103.5 of this part, affected party (in addition to the Service) means the person or entity with legal standing in a proceeding." Here, the appeal is not signed by the petitioner or a representative acting on the petitioner's behalf. As the appeal was not properly filed, and it is unclear whether or not the petitioner consented to having an appeal filed on its behalf, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

It is noted, however, that 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.¹

Here, the evidence submitted contained copies of the petitioner's 2002 through 2004 tax returns, [REDACTED] 2006 through 2008 tax returns, a bill of sale, and a letter from [REDACTED]. The petitioner's tax returns, bill of sale and letter were previously submitted, may not be considered "new" under 8 C.F.R. § 103.5(a)(2), and cannot be considered a proper basis for a motion to reopen. [REDACTED] tax returns do not demonstrate the petitioner's ability to pay the proffered wage from the priority date onwards and will not be considered. The evidence submitted on motion would not be considered a proper basis for a motion to reopen.

The regulations at 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

¹ 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 Riverside University Dictionary* 792 (1984)(emphasis in original).

that the decision was based on an incorrect application of law or [USCIS] policy.” Relying on impertinent or non-precedential decisions does not meet the requirements of a motion to reconsider. The AAO thoroughly reviewed the successor-in-interest issue on appeal and affirms its prior decision.²

Furthermore, United States Citizenship and Immigration Services (USCIS) regulations require that motions 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 would 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. Here, the burden would not have met.

Accordingly, the motion will be rejected, the proceedings will not be reopened or reconsidered, and the previous decision of the AAO will not be disturbed.

ORDER: The motion is rejected.

² In our decision dismissing the appeal, the AAO noted that the petitioner failed to provide Schedule A of the Bill of Sale. Schedule A is also not submitted with the instant motion.