



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

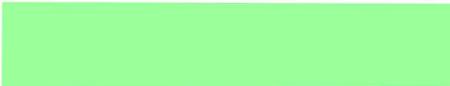
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Date: **APR 24 2013**

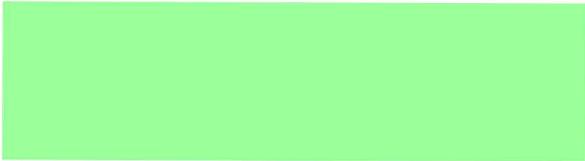
Office: TEXAS SERVICE CENTER

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:



**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 in accordance with the instructions on 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and motion to reconsider. The motion to reopen will be denied. The motion to reconsider will be denied. The petition remains denied. The AAO affirms its decision of July 13, 2012.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a "Specialty Cook/Japanese." 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 affirmed the director's decision finding that the petitioner had not established the petitioner's ability to pay the beneficiary's proffered wage and further that the record failed to establish that the petitioner was the valid successor to the initial entity that filed the labor certification.

The record shows that the motion to reopen and motion to reconsider is properly filed. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The regulation at 8 C.F.R. § 103.5 provides 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." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

A motion to reconsider must: (1) 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; and (2) 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).

As noted above, 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." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. The petitioner did not state new facts to be considered in the reopened proceeding that were not available and could not reasonably have been discovered or presented in the previous proceeding. As such the motion to reopen is denied.

The motion to reconsider shall be denied as the motion does not state reasons for reconsideration which are supported by pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [USCIS] policy, nor does the motion 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). The petitioner states that the AAO raised new issues (not identified by the petitioner) which the

petitioner had not had an opportunity to address and that additional documentation would be provided 30 days to address those unidentified issues.<sup>1</sup> To date, more than eight months after filing the motion to reconsider, the petitioner has submitted no additional information. The petitioner states that the AAO did not adequately address documents submitted in support of the petition. The petitioner, however, did not identify these documents or otherwise state how the documents established the ability to pay the proffered wage and were misconstrued by the AAO. The petitioner has offered no new evidence or statement that would establish that the AAO's prior decision (July 13, 2012) was incorrect based on evidence of record at the time of the initial decision. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In visa petition proceedings, the burden of proving eligibility remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion to reopen is denied. The motion to reconsider is denied. The AAO's decision of July 13, 2012 is affirmed. The petition remains denied.

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<sup>1</sup> The Form I-290B requires that any brief or additional evidence be submitted at the time of filing the petitioner's motion to reopen.