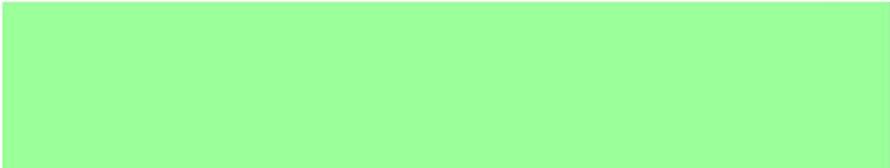




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

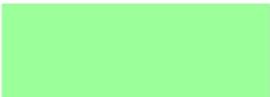


Date:

**APR 26 2013**

Office: TEXAS SERVICE CENTER

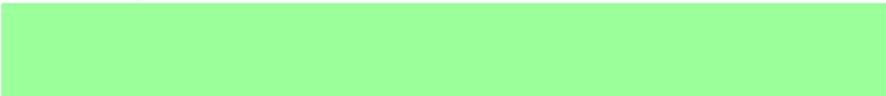
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IN RE:

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 preference visa petition was denied by the Director, Texas Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be denied.

The petitioner is a floral arrangement company. It seeks to employ the beneficiary permanently in the United States as a floral designer. 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.

On March 28, 2012, the AAO dismissed the subsequent appeal, affirming the director's denial. The petitioner then filed a motion to reconsider the AAO decision. The record shows that the motion is properly filed and timely. 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 United States Citizenship and Immigration Services (USCIS) 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. 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).

Counsel asserts in the motion that the AAO failed to consider or give sufficient weight to the argument that the events of September 11, 2001 adversely affected the petitioner's business and that under a totality of the circumstances evaluation, the petitioner demonstrated its ability to pay the proffered wage from the priority date in 2001 onwards.

The AAO's March 28, 2012 decision specifically addressed counsel's contention that the effects of September 11, 2001 adversely affected the petitioner's ability to pay the proffered wage in its totality of the circumstances analysis. Specifically, the AAO stated:

the record of proceeding contains no evidence specifically connecting the petitioner's business decline to the events of September 11, 2001, such as a statement from the petitioner showing a loss or claiming difficulty in doing business specifically because of that event. A broad statement by counsel that its business was impacted adversely by the events of September 11, 2001 cannot, by itself, demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Rather, such general evidence might suggest, that the petitioner's financial status might have appeared stronger had it not been for the events of September 11, 2001. However, the petitioner has not submitted specific evidence of the impact of September 11, 2001 on its business operations. The petitioner did not submit for comparison, for example, its tax returns for the years preceding September 11, 2001. The AAO also notes that the petitioner's tax returns indicate that 2003 was the weakest year for the petitioner's gross receipts, not 2001 or 2002.

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Page 3

Because the petitioner submitted no additional evidence to demonstrate any adverse effects on its business caused by the events of September 11, 2001, nor submitted any precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy, the motion must be denied.

**ORDER:** The motion to reconsider is denied. The petition remains denied.