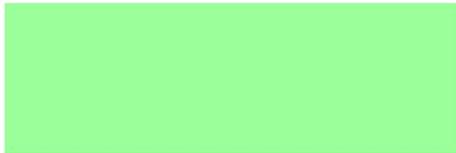


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

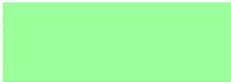


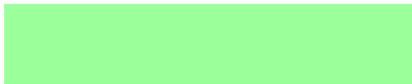
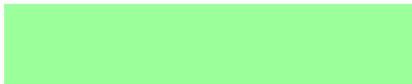
U.S. Citizenship
and Immigration
Services

(b)(6)



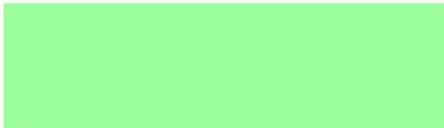
DATE: **AUG 01 2013** OFFICE: NEBRASKA SERVICE CENTER

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner appealed the decision to the AAO who dismissed the appeal on August 27, 2012. The petitioner filed a motion to reconsider the AAO's August 27, 2012 decision dismissing its appeal. On April 8, 2013, the AAO granted the petitioner's motion to reconsider but affirmed its prior decision (August 27, 2012) denying the petition. The matter is again before the Administrative Appeals Office (AAO) on a motion to reopen. The appeal will be rejected pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(I).

The petitioner describes itself as a "printing factory." It seeks to permanently employ the beneficiary in the United States as a printer. The petitioner requests classification of the 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 denying the petition concludes that the petitioner failed to establish its continuing ability to pay the proffered wage from the priority date onward.

The record of proceeding contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the beneficiary's representative.¹ Additionally, the Form I-290B, Notice of Appeal or Motion, was signed by counsel for the beneficiary. The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) specifically prohibits a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. There is no evidence in the record that the petitioner consented to the filing of the appeal.

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)(I).

It should further be noted that a motion to reopen must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed; no provision exists for USCIS to grant an extension to the petitioner to file evidence or arguments in the future. Nothing permits the petitioner to submit evidence beyond the 30 day period allowed for motions to reopen or reconsider. 8 C.F.R. § 103.5(a)(1)(i). While counsel asserts additional time is need to obtain the beneficiary's file from the prior organization that submitted the I-140 petition, the basis of the petition's denial relates to the petitioner's ability to pay the proffered wage, and, the motion would require evidence from the petitioner and not the beneficiary. Even if the motion could be accepted, which it cannot, it would fail to meet the standards of a motion to reopen. 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

¹ In accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all appeals filed on or after March 4, 2010. See 75 Fed. Reg. 5225 (Feb. 2, 2010).

(b)(6)

NON-PRECEDENT DECISION

Page 3

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). The Form I-290 alleges no new facts and does not cite to any precedent decisions to meet the applicable standards. Nothing addresses any of the deficiencies raised in the AAO's decisions of August 27, 2012, or April 18, 2013, the latest decision which counsel submitted a copy of with the motion.

ORDER: The appeal is rejected.