



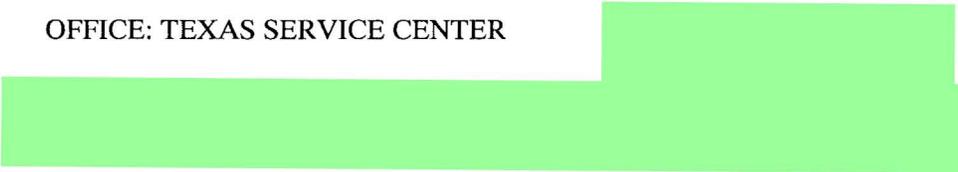
U.S. Citizenship
and Immigration
Services

(b)(6)



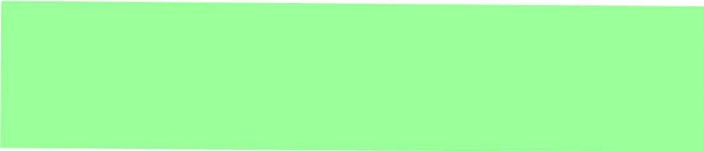
DATE: **AUG 30 2013** OFFICE: TEXAS SERVICE CENTER

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (TSC), denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on July 18, 2012, the AAO dismissed the appeal. The petitioner subsequently filed a motion to reopen and a motion to reconsider, and, on May 28, 2013, the AAO granted the motion and affirmed the prior decision dismissing the appeal. The matter is again before the AAO on a motion to reopen. The motion will be dismissed and the prior decisions will be undisturbed.

The petitioner describes itself as a book binding business. It seeks to employ the beneficiary permanently in the United States as a bindery supervisor. 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 on June 28, 2008.

The petitioner submitted a timely appeal to the denial of the petition that was subsequently dismissed by the AAO on July 18, 2012, with the AAO making the additional determination that the record did not contain sufficient evidence demonstrating that the beneficiary possessed two years of experience in the offered job of bindery supervisor or two years of experience in the alternate occupations of bindery chief or chief bookbinder as required by the labor certification. In its May 28, 2013 decision, the AAO found that, on motion, the petitioner provided documentation, specifically a second Career Certificate, which was sufficient to establish the beneficiary possessed two years of experience in the offered job of bindery supervisor or two years of experience in the alternate occupations of bindery chief or chief bookbinder as required by the labor certification. Therefore, the AAO withdrew that portion of its prior decision relating to this particular issue. The AAO, however, determined that the petitioner had failed to establish that it had the continuing ability to pay the proffered wage. Therefore, the AAO affirmed its prior decision dismissing the appeal.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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

On motion, counsel for the petitioner contends that as the petitioner is an S corporation, the petitioner's net current assets should be combined with the personal net assets of petitioner's owner in determining whether the petitioner has the continuing ability to pay the proffered wage of \$52,167 per year to the beneficiary since the priority date. On motion, the petitioner submits the following: a 'Combined Financial Ability of the Petitioner and its owner' statement; a [REDACTED] for the period January 1, 2013 through March 31, 2013, for an annuity

¹The 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).

issued on November 15, 2006; a 'Final Statement' for a Certificate of Deposit (CD) # [REDACTED] for the period December 21, 2005 through March 25, 2012; a 'Final Statement' for a Certificate of Deposit (CD) [REDACTED] for the period February 12, 2005 through March 25, 2012; Personal Financial Statements for [REDACTED] for each of the years ending 2004 through 2012; and, copies of the petitioner's tax returns for the years 2005 to 2008 previously provided.

On motion, counsel does not dispute that for the years 2005, 2006, and 2007 the petitioner did not have sufficient net income or net current assets to pay the proffered wage of \$52,167.00 per year. Counsel suggests, however, that USCIS examine the personal assets of the petitioner's owner, and contends that the petitioner's net current assets should be combined with the personal net assets of petitioner's owner in determining the ability to pay the proffered wage of \$52,167 since the priority date.

In this matter, the petitioner presented no facts or evidence on motion that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen. All evidence submitted on motion was previously available and could have been discovered or presented in the previous proceeding. It is further noted that the petitioner has submitted the same income tax returns as evidence with this motion that previously submitted on appeal and considered by the AAO in its dismissal of the appeal. The petitioner also submits evidence of the petitioner's owner's assets which are not relevant and there is no reason why this evidence could not have been provided before. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Counsel reasserts that the petitioner is a wholly owned corporation and, as such, the AAO should consider the assets of its owner. He infers that the petitioner and its owner are essentially identical, and that the petitioner's owner has sufficient assets to pay the proffered wage. However, USCIS may not "pierce the corporate veil" and look to the assets of the corporation's owner to satisfy the corporation's ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. Therefore, the additional evidence of the petitioner's owner's personal assets are not considered in determining the petitioner's ability to pay the proffered wage.

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. With the current motion, the movant has not met that burden. The motion will be dismissed.

ORDER: The motion to reopen is dismissed. The appeal remains dismissed. The denial of the petition is undisturbed.