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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

Date: **JAN 24 2013**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

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,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the director's decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The petitioner filed a motion to reconsider the AAO's decision. The motion to reconsider will be dismissed.

The petitioner describes itself as a newspaper publisher. It seeks to employ the beneficiary permanently in the United States as an office manager. 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).¹ The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

At issue in this case is whether the beneficiary possesses the equivalent of a U.S. associate's degree in office administration as required by the terms of the labor certification.

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 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.²

On motion, the petitioner presented no new 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.³

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

² 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).

³ On motion, the petitioner submitted an evaluation of the beneficiary's educational credentials prepared by [REDACTED] on April 12, 2010. Even if the evaluation could be considered "new," the motion still would have been dismissed.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). See also *Matter of D-R-*, 25 I&N Dec. 445 (BIA

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.

Finally, 8 C.F.R. § 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, and, if so, the court, nature, date, and status or result of the proceeding.” The motion does not contain this required statement, and for this additional reason, the motion will be dismissed.

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

ORDER: The motion is dismissed.

2011)(expert witness testimony may be given different weight depending on the extent of the expert’s qualifications or the relevance, reliability, and probative value of the testimony).

The evaluation states the beneficiary’s Certificado Secretaria Bilingue equates to a U.S. Associate of Applied Science in secretarial science with a concentration in English and Spanish. The evaluator bases his conclusion on the beneficiary’s completion of the Bachillerato Tecnologica, completed in June 1988, followed by two years of attendance in the Escuela Benjamin Franklin, Ensenanza Secretarial Bilingue-Preparatoria program, completed in September 1990. The Bachillerato Tecnologica was completed by the beneficiary while she ages 15 to 18, and is equivalent to a U.S. high school graduation. However, the petitioner has not established that the Escuela Benjamin Franklin program was equivalent to a U.S. postsecondary program of study leading to an associate’s degree. Escuela Benjamin Franklin offers multiple educational programs, and the program attended by the beneficiary did not require a high school degree. The certificate from Escuela Benjamin Franklin states the degree is “Ensenanza Secretarial Bilingue-Preparatoria,” or Bilingual Secretary Education-Upper Secondary. Therefore, the evidence in the record is not sufficient to establish that the beneficiary’s Ensenanza Secretarial Bilingue-Preparatoria is the foreign equivalent of a U.S. associate’s degree in office administration.