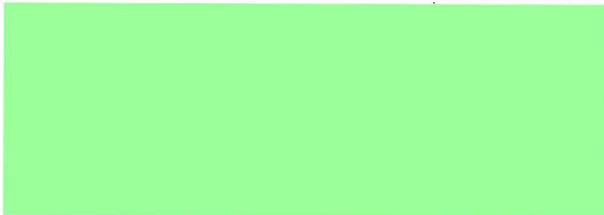




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **JAN 29 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 AAO 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.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed the director's decision which was dismissed by the Administrative Appeals Office (AAO) as being untimely filed. The petitioner filed a motion to reopen and reconsider the AAO's decision. The AAO *sua sponte* reopened the appeal finding it to be timely. The AAO dismissed the appeal as moot. The petitioner filed another motion to reopen and reconsider the AAO's decision. The matter is again before the AAO. The motion to reopen and reconsider is dismissed. The petition remains denied.

The petitioner is a travel agency. It seeks to employ the beneficiary permanently in the United States as a travel agency customer service supervisor. As required by statute, the petition is accompanied by an ETA Form 9089, 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 additionally determined that the petitioner had incorrectly classified the position as being for a skilled worker instead of an unskilled worker. The director denied the petition accordingly. On July 6, 2009, the petitioner filed an appeal of the director's decision to the AAO. On April 27, 2010, the AAO rejected the petitioner's appeal as untimely. The petitioner filed a motion to reopen and reconsider the AAO's decision on May 25, 2010 stating that the appeal had been timely. The AAO *sua sponte* reopened the appeal finding it to be timely. On January 31, 2011, the AAO dismissed the appeal as moot after issuing a notice of derogatory information (NDI) to which the petitioner responded on November 19, 2009. In its decision, the AAO determined that the petitioner was not in business during the pendency of the petition and the appeal.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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.<sup>1</sup>

In the instant case, the motion to reopen does not qualify for consideration under 8 C.F.R. § 103.5(a)(2) because the petitioner does not provide any new facts with supporting documentation not previously submitted.

In its motion, the petitioner presented no facts or evidence 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. There was no evidence submitted on motion, and in his brief on motion, counsel merely restates his previous arguments from the response to the AAO's NDI. As the petitioner did not present any new facts with

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<sup>1</sup> 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).

supporting documentation not previously submitted, the petitioner has not established a proper basis for a motion to reopen.

8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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 Service 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.

The petitioner does not submit any document that would meet the requirements of a motion to reconsider. The petitioner does not state any reasons for reconsideration nor cite any precedent decisions in support of a motion to reconsider. The petitioner does not argue that the previous decisions were based on an incorrect application of law or Service policy, but instead restates its previous assertion from its response to the NDI, that [REDACTED] is a successor-in-interest to the petitioner. The petitioner does not state any reasons that would meet the standard for reconsideration.

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. § 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 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." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion to reopen and reconsider is dismissed. The AAO's previous decision is affirmed. The petition remains denied.