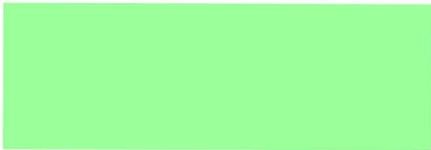
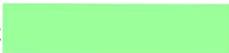


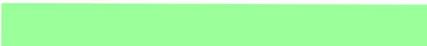


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 23 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. 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
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center (director). The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The petitioner then filed a motion to reopen and motion to reconsider with the AAO. The motions were granted and the prior decision of the AAO was affirmed. The matter is now before the AAO on a second motion to reopen and motion to reconsider. The motions will be dismissed and the previous decision of the AAO will be left undisturbed.

The motion to reopen does meet the requirements at 8 C.F.R. § 103.5(a)(2) because the petitioner has failed to state any new facts or present new documentary evidence. The motion to reconsider does not meet the requirements of 8 C.F.R. § 103.5(a)(3) because the petitioner fails to identify any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or 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.¹ Furthermore, 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. Therefore, because the instant motions do not meet the applicable requirements, they must be dismissed

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 motions to reopen and reconsider are dismissed. The May 8, 2013 decision of the AAO is left undisturbed.

¹ We note that the petition is not approvable as filed. The instant labor certification requires 24 months of training. Counsel asserts that the alternate education and experience field on the ETA 9089 is meant to supplant this training requirement. Counsel is incorrect. As noted in the AAO's prior decision, the instructions for Form ETA 9089 clearly state "Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience". Therefore, the ETA 9089 in the instant case must be read as requiring 24 months of training, in addition to the primary or alternate education and experience requirements. The petitioner has not established that the beneficiary possessed the 24 month of training required. The petitioner has also failed to address the inconsistencies regarding the beneficiary's experience that were noted in the AAO's prior decision.