



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUL 23 2013** OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center (the director), and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will be denied.

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

(3) Requirements for motion to reconsider.

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.

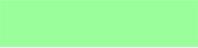
On motion, counsel requests the AAO to “take a second and closer look at the points we raised in our last motion and reconsider its decision.” The petitioner submits a letter describing the benefits to the school from the beneficiary’s services. The petitioner does not address the AAO’s finding that the job requirements for the proffered position, “some post-high school” and 6 months of experience as an office clerk, or an associate’s degree and 12 months of experience as a file clerk does not meet the minimum requirements for a skilled worker or professional. As noted in the decision, the job must require at least two (2) years of training or experience to qualify the position as a skilled worker under the visa classification. Nor does the petitioner address the AAO’s finding that the letter submitted by the petitioner to prove the beneficiary’s work experience did not meet the requirements of the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A), and that the petitioner failed to establish that the beneficiary had the qualifying experience.

The motion to reconsider has been reviewed and found that it does not qualify for consideration under 8 C.F.R. § 103.5(a)(3). The petitioner’s counsel makes no assertion that the director or the AAO made an erroneous decision through misapplication of law or policy. Neither does the motion establish that the decision was incorrect based on the evidence of record at the time of the initial decision. The motion shall 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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

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ORDER: The motion is dismissed.