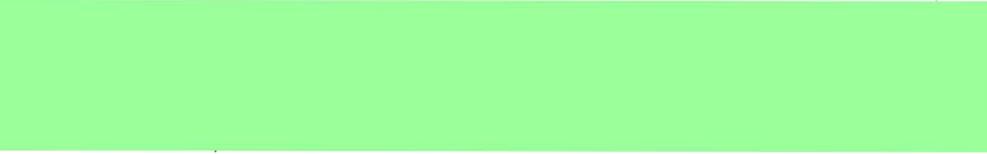


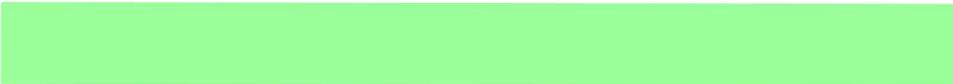
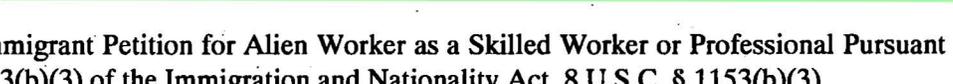


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 07 2013** OFFICE: TEXAS SERVICE CENTER FILE: 

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was revoked by the Director, Texas Service Center.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

In the AAO's October 20, 2010 dismissal, the AAO determined that the petitioner failed to establish its ability to pay the proffered wage for the beneficiary, and for one other beneficiary of a petition filed in 2005. The petitioner filed a motion to reopen and a motion to reconsider the AAO's dismissal. On January 24, 2013, the AAO issued a Notice of Intent to Dismiss and Derogatory Information (NOID) to the petitioner. The AAO requested evidence of the petitioner's business status. On February 15, 2013, the petitioner submits documentation evidencing the good standing of the petitioner.¹

The regulation at 8 C.F.R. § 103.5(a)(2) states, 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

In this matter, the petitioner acknowledges the AAO's dismissal based on the petitioner's ability to pay for 2002, 2004, and 2007 for two beneficiaries. On motion, the petitioner requests that its petition for [REDACTED] be withdrawn to preserve its petition for the instant beneficiary. The petitioner asserts that its net current assets are more than sufficient to pay the proffered wage for the instant beneficiary for every year from 2002 to 2008.

Counsel submits copies of the petitioner's and the owner's financial documents, business documents, articles, and a previous AAO decision. The submitted documents are not new facts, in that they were available and could have been discovered or presented in the previous proceedings, and cannot be considered a proper basis for a motion to reopen.

Counsel also submits the petitioner's federal tax returns for 2010, 2011 and 2012. While these documents are new and could not have been discovered in previous proceedings, the documents fail to address the petitioner's inability to pay the beneficiary the proffered wage in 2002, 2004 and 2007. Further, the withdrawal of the petitioner's other petition in 2013 does not apply retroactively. The petitioner must still establish its ability to pay the proffered wage to both beneficiaries from the priority date until the petitions are denied, withdrawn, or the beneficiaries obtain lawful permanent residence.

¹ The petitioner submits a copy of the petitioner's annual report status, which is in good standing after filing an annual report on January 22, 2013, according to the Louisiana Secretary of State website.

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).

The regulation at 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 motion to reconsider also fails to qualify for consideration under 8 C.F.R. § 103.5(a)(3). On motion, counsel asserts that the petitioner's overall magnitude of the business activities satisfy the standard set forth in *Sonegawa*. See *Matter of Sonegawa*, 12 I&N Dec. 612 (BIA 1967). The petitioner asserts that it began operations in the 1980s and has a long history of doing business and a track record of growth.

All of the information with respect to the petitioner's business history, reputation and uncharacteristic losses and expenditures was considered by the AAO on appeal. The instant motions do not allege any error in the application of law or policy.

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 motions 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 motions 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.

ORDER: The motions are dismissed. The petition remains denied.