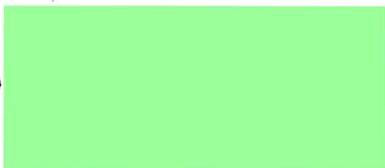




U.S. Citizenship
and Immigration
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(b)(6)

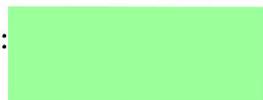


Date:

MAR 18 2013

Office: TEXAS SERVICE CENTER

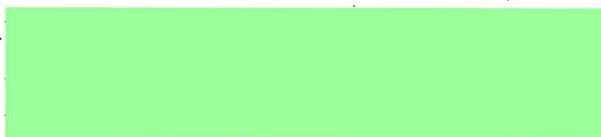
FILE:



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:

SELF-REPRESENTED

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, Texas Service Center. The subsequent appeal was rejected by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reconsider. The motion to reconsider will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a restaurant manager.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, 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.

United States Citizenship and Immigration Services (USCIS) regulations require that motions to reopen or reconsider be filed within 30 days of the underlying decision. 8 C.F.R. § 103.5(a)(1)(i). The motion to reconsider was timely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides:

General. Except where the Board has jurisdiction and as otherwise provided in 8 CFR parts 3, 210, 242 and 245a, when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

The term "affected party" means the person or entity with legal standing in a proceeding. The party affected in visa petition cases is the petitioner. *Matter of Dabaase*, 16 I&N Dec. 720 (BIA 1979). The petitioner in this proceeding is [REDACTED] with a federal employer identification number (EIN) of [REDACTED]. According to the tax returns in the record, [REDACTED] is a fictitious name used by [REDACTED] a New York corporation.

The motion was filed by [REDACTED]¹ which the record indicates is the employer that filed the labor certification application and is a corporation sharing common ownership with [REDACTED]. However, [REDACTED] is not the petitioner in this proceeding;² therefore it is not an affected party and has no standing to move to reconsider this proceeding.³ Therefore, the motion to reconsider will be dismissed for this reason.

¹ The motion is accompanied by a Form G-28 authorizing [REDACTED] to act as a representative for [REDACTED], but there is no Form G-28 authorizing [REDACTED] to represent [REDACTED] therefore, the AAO will consider the movant to be self-represented in this matter.

² According to the tax returns in the record, the EIN for [REDACTED]

³ The movant failed to establish that it is the same entity as the petitioner or a successor-in-interest to the petitioner. If the movant is a different entity than the petitioner, it must establish that it is a successor-in-interest to that entity. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481

In addition, the regulation at 8 C.F.R. § 103.5(a)(3) provides:

Requirements for a 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.

The motion to reconsider does not qualify for consideration under 8 C.F.R. § 103.5(a)(3) because counsel did not establish that the AAO made an erroneous decision based on the evidence of record at the time of the initial decision, and the motion was not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. The motion to reconsider will also be dismissed for this reason.

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. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

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.

(Comm'r 1986). The movant may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects. The evidence in the record does not satisfy all three conditions described above because it does not fully describe and document the transaction transferring ownership of the predecessor; it does not demonstrate that the job opportunity will be the same as originally offered; and it does not demonstrate that the claimed successor is eligible for the immigrant visa in all respects, including whether it and the predecessor possessed the ability to pay the proffered wage for the relevant periods. Accordingly, the motion must also be dismissed because the movant has failed to establish that it is a successor-in-interest to the petitioner.

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Accordingly, the motion to reconsider will be dismissed. The proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reconsider is dismissed. The petition remains denied.