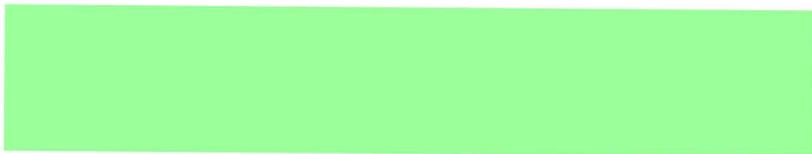
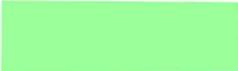


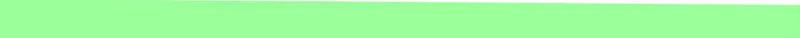


**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **MAY 06 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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and on May 25, 2012, the AAO dismissed the appeal. Counsel to the beneficiary filed a motion to reopen and reconsider the AAO's decision. *See* 8 C.F.R. § 103.5. The matter is now before the Administrative Appeals Office (AAO) on motion. The motion will be rejected pursuant to 8 C.F.R. §§ 103.3(a)(2)(v)(A)(I) and 103.3(a)(1)(iii)(B).

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker. The director determined that the petitioner failed to demonstrate its continuing ability to pay the beneficiary's proffered wage beginning on the priority date, and denied the petition accordingly.

The petitioner filed a timely appeal, which the AAO dismissed on May 25, 2012, after also concluding that the petitioner had failed to establish its continuing ability to pay the proffered wage to the beneficiary from the priority date onwards.

A timely motion to reopen and reconsider was filed on June 25, 2012, which contains only a request for additional time to file a supporting brief and additional evidence.¹

The record of proceeding contains an executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, for the beneficiary's new representative, who signed the Form I-290B, Notice of Appeal or Motion, in this case on behalf of the beneficiary. There is no evidence in the record that the petitioner² consented to the filing of the motion. The federal regulations at 8 C.F.R. § 103.5(a)(1) and (5) permit affected parties to file a motion to reopen and reconsider an unfavorable United States Citizenship and Immigration Services (USCIS) decision. For purposes of filing an appeal or a motion to reopen or reconsider, the term "affected party" means "the person or entity with legal standing in a proceeding [and] does not include the beneficiary of a visa petition." 8 C.F.R. § 103.3(a)(1)(iii)(B). Thus, neither the beneficiary, nor his current counsel,³ in this case have standing to file the instant motion to reopen.

¹ Instructions on Form I-290B require the brief and/or evidence to be submitted at the time of filing of the motion to reopen.

² Additionally, the AAO notes that an online search of the website of the Georgia Secretary of State indicates that the petitioning corporation has been dissolved as of September 3, 2012. *See* <http://corp.sos.state.ga.us/corp/soskb/CSearch.asp> (last accessed April 29, 2013). If the petitioning organization is no longer in business, then no *bona fide* job offer exists, and the petition and appeal would be therefore moot. Even if the appeal could be otherwise sustained, the approval of the petition would be subject to automatic revocation due to the termination of the petitioning organization's business. *See* 8 C.F.R. § 205.1(a)(iii)(D).

³ A copy of this decision is being provided to petitioner's counsel of record, who filed the initial appeal on behalf of the petitioner that serves as the underlying basis of the instant motion.

As the motion was not properly filed, and it is unclear whether or not the petitioner consented to having a motion filed on its behalf, it will be rejected.⁴ 8 C.F.R. §§ 103.3(a)(2)(v)(A)(I) and 103.3(a)(1)(iii)(B).

ORDER: The appeal is rejected.

⁴ As of this date, more than nine months later, the AAO has not received any brief or supporting evidence, as indicated on the Form I-290B. No provision exists for USCIS to grant an extension to submit evidence in support of a motion to reopen. Thus, even if the motion had been properly filed by the petitioner or petitioner's representative, the motion would still be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(iii)(C), 103.5(a)(2), 103.5(a)(3), and 103.5(a)(4), because it failed to meet the regulatory requirements of a motion to reopen or reconsider at the time it was filed.

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. The motion here does not set forth any facts, arguments, or evidence that may be considered "new" under 8 C.F.R. § 103.5(a)(2) or be considered a proper basis for a motion to reopen. As noted above, counsel merely states on Form I-290B that, "[d]ue to the impending deadline, we hereby request additional time to file supporting brief and additional evidence."

Similarly, a motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). However, the motion does not address at all the reasons for denial articulated in the AAO's May 25, 2012 decision and has not provided any additional evidence in support of the motion. In fact, the motion does not even express disagreement with the AAO's prior decision. The AAO, therefore, concludes that the motion does not meet the regulatory requirements for reconsideration.

Furthermore, 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 would also be dismissed for this reason.