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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

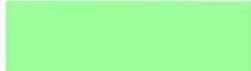


U.S. Citizenship
and Immigration
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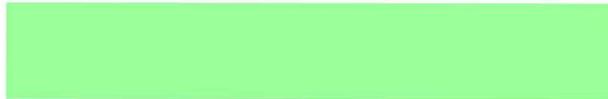


DATE: **MAY 22 2013**

OFFICE: TEXAS SERVICE CENTER

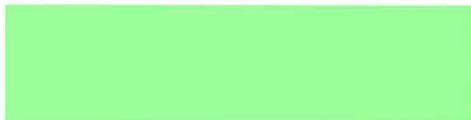
FILE: 

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:



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 employment-based visa petition was denied 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 reconsider. The motion will be dismissed.

The petitioner describes itself as a gymnastics school. It seeks to employ the beneficiary permanently in the United States as a head gymnastics coach. As required by statute, the petition is accompanied by ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The AAO determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The AAO also found that the petitioner had failed to establish that the beneficiary possessed the necessary experience and education as described on the labor certification. Finally, the AAO found that the labor certification was invalid because it had not been signed by the petitioner, the beneficiary, or by counsel. The AAO dismissed the appeal accordingly.

A motion to reconsider must establish that the director and the AAO made an erroneous decision through misapplication of law or policy. 8 C.F.R. § 103.5(a)(3).

Counsel stated on motion that the petitioner had paid the beneficiary in excess of the proffered wage during the years in question. However, this assertion is supported only by a hand-written ledger sheet and the total salaries and wages entry on the petitioner's Federal income tax return. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof.¹ The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also stated on motion to reconsider that the petitioner had established that the beneficiary satisfied the job requirements detailed on the labor certification. Counsel cited English translations of foreign language documents relating to the beneficiary's work history. However, as stated in the AAO's previous decision, these translations did not comply with the terms of 8 C.F.R. § 103.2(b)(3):

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the translations submitted by the petitioner are not certified, the AAO cannot determine whether the evidence supports the petitioner's claims. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of

¹ Both the director and the AAO noted that the petitioner failed to provide any forms W-2 it issued to the beneficiary to demonstrate that it employed and paid the beneficiary at any time from the priority date or subsequently. The petitioner provides no new evidence to demonstrate its claim of employing and paying the beneficiary an amount equal to or above the proffered wage.

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The AAO also noted that the labor certification was not signed, as required by 20 C.F.R. § 656.17(a)(1). With the motion, counsel submits a photocopy of an uncertified Form 9089 with signatures. This is insufficient to meet the requirements of 20 C.F.R. § 656.17(a)(1) as the Form 9089 is uncertified.

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. 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 met that burden.

ORDER: The motion to reopen is dismissed.