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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  
Services

[Redacted]

DATE: **MAY 28 2013**

OFFICE: TEXAS 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:

[Redacted]

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 approved by the Director, Texas Service Center. On September 13, 2010 the director revoked the petition. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain revoked.

In the director's September 13, 2010 revocation, the director determined that the petitioner failed to establish that the beneficiary possessed the requisite experience for the proffered position. The petitioner appealed the director's denial to the AAO. On December 26, 2012, the AAO dismissed the appeal under its authority for *de novo* review. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In its decision, the AAO found that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date, and failed to establish its ability to pay the beneficiary the proffered wage as of the priority date onwards.

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.<sup>1</sup>

In the instant case, counsel submits a copy of the beneficiary's secondary school certificate, copies of various paystubs issued by [REDACTED] to the beneficiary dated from 1988 through 1992, the petitioner's tax returns for 2009 through 2011, and the beneficiary's 2009 Form W-2 issued by the petitioner.

In its dismissal of the appeal, the AAO raised for the first time the issue of the beneficiary's educational qualifications for the offered position. The AAO noted that the record failed to include evidence of the beneficiary's completion of high school. The AAO now accepts the beneficiary's Secondary School Certificate submitted with the instant motion and concludes that the beneficiary does possess the minimum education (completion of high school) as stated on the labor certification.

Counsel also submits a letter from [REDACTED] stating that the beneficiary and [REDACTED] are the same individual. The AAO accepts that the beneficiary is also known as [REDACTED].

The beneficiary's pay stubs from [REDACTED] are dated between 1988 and 1992. Counsel asserts that, after almost 20 years, the beneficiary cannot produce all pay statements. However, there is no explanation of why these pay stubs were previously unavailable. The pay stubs are not new facts, in that they were available and could have been discovered or presented in the previous

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<sup>1</sup> 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).

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proceedings, and cannot be considered a proper basis for a motion to reopen. Given the above, the evidence submitted on motion will not be considered a proper basis for a motion to reopen.

Finally, counsel submits on motion a letter from [REDACTED] stating that the petitioner's 2001 and 2003 income/net current assets were substantially reduced due to a temporary loss, and the petitioner's tax returns for 2009 through 2011. [REDACTED] states that the petitioner experienced a loss in 2001 due to [REDACTED] and September 11, 2011, and again in 2003 due to road construction. The petitioner does not provide any new facts with supporting documentation which would overcome the grounds for denial. No evidence was submitted in support of [REDACTED] claims, including evidence of how the petitioner was directly impacted by either [REDACTED] the tragic events of September 11, 2011 or by the 2003 road construction. Further, no explanation is provided as to why this information was previously unavailable. Given the above, the evidence submitted on motion will not be considered a proper basis for a motion to reopen.

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 motion is dismissed. The petition remains revoked.