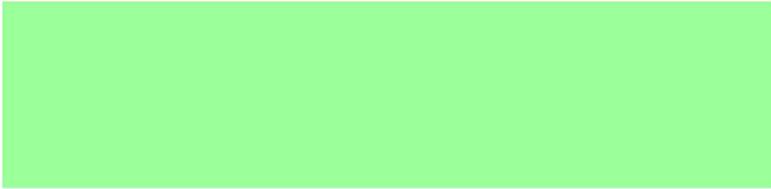


(b)(6)



U.S. Citizenship  
and Immigration  
Services



DATE: OFFICE: TEXAS SERVICE CENTER  
MAY 31 2013

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 Vermont Service Center approved the Form I-140, Immigrant Petition for Alien Worker. The Texas Service Center revoked the approval of the petition. The petitioner appealed the director's decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal, found that the beneficiary made a willful misrepresentation of a material fact, and invalidated the Form ETA 750, Application for Alien Employment Certification. The beneficiary filed a motion to reopen and reconsider the AAO's decision on the issue of willful misrepresentation of a material fact. The AAO dismissed the motion. The beneficiary filed a second motion to reopen and reconsider. The second motion will be dismissed as improperly filed and the AAO's prior decision will not be disturbed.

The petitioner describes itself as a landscaping company. It seeks to permanently employ the beneficiary in the United States as a landscape gardener. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

On appeal, the AAO informed both the petitioner and the beneficiary that derogatory information had come to light involving the beneficiary's work experience as a landscape gardener in Brazil for [REDACTED] from March 1, 1997 to May 1999. In the Notice of Derogatory Information and Request for Evidence (NDI/RFE) dated May 5, 2010 the AAO noted discrepancies in the identity of the beneficiary's claimed former employer(s) in Brazil and the nature of the employers' business(es) in retail and/or veterinary services, which appeared to be at odds with the beneficiary's work experience as a landscape gardener.<sup>1</sup> Neither the beneficiary nor the petitioner submitted a response.<sup>2</sup>

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<sup>1</sup> The record contains sworn statements issued by [REDACTED] stating that the beneficiary worked for [REDACTED] from March 1, 1997 until April 1998 when the company was sold to [REDACTED] and that [REDACTED] continued to employ the beneficiary until May 30, 1999. The record also contains CNPJ (proof of business registration) printouts of [REDACTED]. A review of the CNPJ printouts reveals that [REDACTED] was in a retail business selling veterinary medicine, and that [REDACTED] was in a retail business selling other products.

<sup>2</sup> Petition beneficiaries do not normally have standing in administrative proceedings. *See Matter of Sano*, 19 I. & N. Dec. 299, 300 (BIA 1985). Beneficiaries ordinarily do not have a right to participate in proceedings involving the adjudication of a visa petition, as the petition vests no rights. *See Matter of Ho*, 19 I. & N. Dec. 582, 589 (BIA 1988). Moreover, there are no due process rights implicated in the adjudication of a benefits application. *See Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1050-51 (9th Cir. 2008); *see also Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."). Nonetheless, during the adjudication of the petitioner's appeal of the revocation of the approval of the petition, the AAO notified the beneficiary of the derogatory information regarding his prior employment and permitted him an opportunity to respond.

The AAO determined that the petitioner had failed to establish that the beneficiary possessed the required experience for the offered position. The AAO also found that the beneficiary had willfully misrepresented his past work experience to gain an immigration benefit, entered a finding of willful misrepresentation against the beneficiary, and invalidated the Form ETA 750 labor certification.

The beneficiary filed a motion to reopen and reconsider the AAO's decision that the beneficiary willfully misrepresented a material fact. The AAO dismissed the motion as improperly filed. The beneficiary filed the instant to reopen and reconsider the AAO's decision that the beneficiary willfully misrepresented a material fact.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states:

For purposes of this section and §§ 103.4 and 103.5 of this part, affected party (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) states, in pertinent part:

*Filing Requirements* – A motion shall be submitted on Form I-290B and may be accompanied by a brief. It must be: (A) In writing and signed by the affected party or the attorney or representative of record, if any.

Therefore, the beneficiary is not authorized to file a motion to reopen or reconsider in this matter. The motion must therefore be dismissed as it was not filed by an affected party.<sup>3</sup>

Upon review, the AAO declines to reopen as the moving party is an unaffected party without standing. Additionally, the motion is unaccompanied by evidence, reasoning or precedents in support of the challenge to the AAO's prior decision. *See* 8 C.F.R. § 103.5.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act,

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<sup>3</sup> In addition, even if the beneficiary could be considered a proper party in this proceeding, the motion to reopen and reconsider would have been dismissed for failure to meet the requirements of a motion. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 USCIS 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Here, the motion does not state new facts to be proved in the reopened proceeding nor does it provide reasons for reconsideration.

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8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the motion 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 AAO's dismissal of the appeal, finding of willful misrepresentation of a material fact, and invalidation of the labor certification remain undisturbed.

CC:

[Redacted]