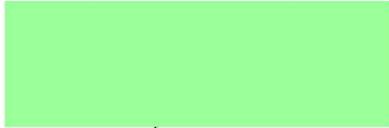


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

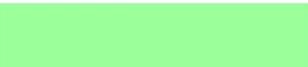
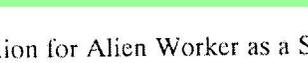


U.S. Citizenship  
and Immigration  
Services

(b)(6)

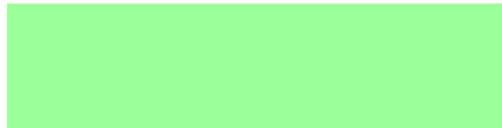


DATE: SEP 20 2013      OFFICE: NEBRASKA SERVICE CENTER      FILE: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based visa petition was denied by the Director, Nebraska Service Center (director). The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reconsider. The motion will be dismissed. The petition will remain denied.

The petitioner describes itself as an electric engineering firm. It seeks to employ the beneficiary permanently in the United States as an electrical engineer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had gone out of business and that the successor had not established that it was the "successor in interest" to the petitioner. Therefore, the director concluded 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 director also determined that the petitioner had not established that the beneficiary possessed the required work experience detailed on the labor certification. The director denied the petition accordingly. The AAO affirmed the director's decision and dismissed the appeal on May 22, 2012. On June 4, 2013, the AAO granted a motion to reopen and motion to reconsider and again affirmed the director's finding that the appellant had not established it was a "successor in interest" to the petitioner. The AAO also affirmed the director's determination that the petitioner had not established the ability to pay the proffered wage since the priority date. Finally, the AAO affirmed the director's finding that the petitioner had not established that the beneficiary possessed the minimum work experience required by the labor certification. Therefore, the AAO again dismissed the appeal.

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. 8 C.F.R. § 103.5(a)(3).

Counsel stated on motion that the movant was the successor in interest to the petitioner. However, counsel also conceded that "it was the intent to change the name only, but upon COA advice, two new companies should be formed to assume the rights and obligations of [the petitioner.]" Counsel's concession that the rights and obligations of the petitioner were divided among two separate companies supports the decisions of the AAO and of the director; therefore, this cannot be considered a proper basis for a motion to reconsider.

Counsel stated on motion that "it has been shown by the evidence presented that combined there is sufficient income to guarantee the salary at any given time." However, counsel's assertion is not supported by any evidence. In its two previous decisions, the AAO clearly articulated why the successor companies were not "successors in interest" and why, therefore, their net incomes and net current assets could not be considered in determining the petitioner's ability to pay the proffered wage since the priority date. However, the AAO also considered, *arguendo*, the combined net incomes and combined net current assets of all companies claimed by counsel to have been successors in interest. The AAO determined that even the combined net incomes of these companies

were insufficient to establish the ability to pay the proffered wage since the July 21, 2003 priority date. Counsel did not discuss the AAO's analysis of the combined net incomes or combined net current assets for the years in question. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, this cannot be considered a proper basis for a motion to reconsider.

Counsel has not contested the third reason cited by the AAO for the dismissal of the appeal; namely, that the petitioner had failed to establish that the beneficiary possessed the minimum experience required to perform the offered position by the priority date. Accordingly, the motion to reconsider must be dismissed.

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 reconsider is dismissed. The petition remains denied.