



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 27 2013**

OFFICE: NEBRASKA 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:

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 preference visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal. The petitioner subsequently filed a motion to reconsider. The motion will be dismissed and the petition remains denied.

The petitioner is a senior care facility. It seeks to employ the beneficiary permanently in the United States as a business development specialist. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director 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 director denied the petition accordingly. The AAO affirmed the director's decision on June 28, 2013.

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. 8 C.F.R. § 103.5(a)(3). In addition, a motion to reconsider must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel for the petitioner requests that the AAO reconsider its decision based on "new evidence and/or new information presented herein." Pursuant to 8 C.F.R. § 103.5(a)(2), "[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.¹

In the instant, counsel does not request a motion to reopen. Rather, counsel checked Box E on Form I-290B, requesting a motion to reconsider. However, in his brief, counsel does not assert any misapplication of law or policy. Nor does counsel cite any precedent decisions. Therefore, the motion does not meet the requirements of 8 C.F.R. § 103.5(a)(3) and must be dismissed.

Even if the AAO were to consider the instant motion as a motion to reopen, counsel provides no explanation as to the unavailability of the new evidence submitted on motion. In its decision dismissing the appeal, the AAO specifically noted that the record failed to demonstrate an obligation on the part of [REDACTED] to pay the proffered wage. On motion, counsel submits printouts from the website for [REDACTED] which lists the petitioner as the organization providing corporate oversight for [REDACTED] and states that [REDACTED] is located next door to [REDACTED]. These printouts were not previously unavailable nor do they support counsel's assertion that [REDACTED] has an obligation to pay the proffered wage.

¹The 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).

Other evidence submitted with the motion, including a letter from [REDACTED] and a deed of trust between [REDACTED] and [REDACTED] were previously submitted and cannot be considered new. Further, the petitioner's 2011 tax return submitted on motion has no bearing on the petitioner's ability to pay the proffered wage beginning in 2009, the priority date of the instant petition. Therefore, the motion also fails to meet the requirements 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 motion will be dismissed.

ORDER: The motion to reconsider is dismissed. The prior decision of the AAO dismissing the appeal shall be affirmed. The petition remains undisturbed.