

(b)(6)

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

DATE:

APR 08 2014

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 (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 Director, Texas Service Center, denied the immigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and, on November 30, 2012, the AAO dismissed the appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decision of the AAO is affirmed. The petition remains denied.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3) as a skilled worker or professional. The director determined that the petitioner failed to establish the petitioner's ability to pay the proffered wage and the beneficiary's qualifications for the proffered position. The director also noted that the record contained inconsistent employment information for the beneficiary. On appeal, the AAO also found that the employment letter submitted on appeal contained inconsistent employment information.

The motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner's counsel asserts that the director and the AAO made an erroneous decision through misapplication of law or policy.

Counsel asserts that the petitioner's ability to pay should be based on two petitions instead of three and that the proffered wage is at issue. Counsel states that the proffered wage for the second petition is \$36,296 per year. Although counsel alleges that the AAO's decision was based on consideration of three petitions, counsel is incorrect. The AAO only considered two petitions in its decision dated November 30, 2012 and found that the wages for the second petition were \$36,296 per year.

Counsel has indicated again that the proffered wage for the beneficiary in the instant matter and that of a second beneficiary are less than what it pays subcontractors to do the proffered position. However, the petitioner has not submitted contracts for these subcontractors, information about the duties that the subcontractors perform, or Internal Revenue Service Forms 1099 for the subcontractors. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

Although counsel asserts that enforcing the petitioner's ability to pay in the instant matter is unreasonable and capricious, counsel provides no support for his assertions. Counsel provides no case law to support this position, which is contrary to 8 C.F.R. § 204.5(g)(2). *See also Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

The brief on motion makes all of the same assertions previously made on appeal and addressed in the AAO's November 30, 2012 decision. On motion, counsel does not address the AAO's concerns regarding the inconsistent information between the [REDACTED] and the [REDACTED] employment letters. Further, the AAO notes that although the brief on motion indicates that counsel is submitting an affidavit from the beneficiary, none was submitted on motion.

In his brief, counsel asserts that the beneficiary worked for both [REDACTED] and [REDACTED] during the same time period and that the beneficiary meets the requirements for the proffered position. As noted previously, the record contains discrepancies between the labor certification and the employer letter and the previous labor certification for the beneficiary. The AAO notes that the Form G-325A, Biographic Information signed by the beneficiary on August 6, 2007 lists no employment outside of the United States. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). While it is possible that the beneficiary worked for two employers during the same time period, counsel did not submit any independent, objective evidence on motion indicating that such was the case and that the beneficiary met the requirements for the proffered position prior to the priority date of November 21, 2003. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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).

Finally, in his brief on motion, counsel discusses fraud and states that the beneficiary had no intent to commit fraud. However, the AAO decision did not include an allegation of fraud or willful misrepresentation.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden.

ORDER: The motion to reconsider is granted. The decision of the AAO dated November 30, 2012 is affirmed. The petition remains denied.