



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **DEC 23 2014** OFFICE: VERMONT 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 employment-based preference visa petition was initially approved by the Director, Vermont Service Center. On June 27, 2002, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR) based on section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c). On November 8, 2002, the Director revoked the approval of the Immigrant Petition for Alien Worker (Form I-140) in a Notice of Revocation (NOR). The petitioner filed a motion to reconsider/motion to reopen. The Director reopened the case on the petitioner's motion and affirmed his prior revocation decision. The matter was appealed to the Administrative Appeals Office (AAO) and we dismissed the appeal. The petitioner has subsequently filed four motions to reopen/motions to reconsider. We granted the first, third, and fourth motions and each time we affirmed our prior decisions. We dismissed the second motion. On December 24, 2012, the petitioner filed the instant motion to reopen and motion to reconsider.<sup>1</sup> The motion to reopen and motion to reconsider will be dismissed, and the previous decisions of the AAO dated November 10, 2004, August 22, 2006, February 12, 2008, November 28, 2012, and August 15, 2013, will be affirmed. The approval of the petition will remain revoked.

The petitioner describes itself as a driving school. It seeks to employ the beneficiary permanently in the United States as a manager. 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 revoked the approval of the instant immigrant petition pursuant to section 204(c) of the Act, 8 U.S.C. § 1154(c), following a prior decision on the beneficiary's previously submitted Form I-751, Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status. The record demonstrates that the family-based immigrant petition had been denied based on a written request of the sponsor and on the failure of the beneficiary to establish that he had not entered into his marriage solely in order to procure immigration benefits.

Beyond the decision of the director and our prior decisions, our most recent decision also noted that the appellant was not the same legal business entity as the company that filed the labor certification and petition. We notified the petitioner that in any further filings it must demonstrate that [REDACTED] " [REDACTED] " which was incorporated in 2008 and which filed the current motion to reopen and motion to reconsider, is the successor-in-interest to [REDACTED] the entity listed on the Form I-140 and labor certification.

The regulations at 8 C.F.R. § 103.5(a)(2) state, 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." In this matter, the petitioner presented no new facts or evidence on motion that could be considered a proper basis for a motion to reopen. Therefore, the filing of the Form I-290B without the support of any new facts, affidavits or other documentary evidence will not be considered a proper basis for a motion to reopen.

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

<sup>1</sup> The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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).

On motion, counsel asserted that we were acting “contrary to law” when we found that the beneficiary had previously entered into marriage solely in order to procure immigration benefits. However, without citing precedent authority or submitting documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof.<sup>2</sup> 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).

Moreover, counsel disregarded our notification that in any further filings the petitioner must demonstrate that [REDACTED] is the successor-in-interest to [REDACTED]. On motion, counsel did not contest this finding and did not submit any evidence that the appellant was the same legal business entity as the company that filed the labor certification and petition. Therefore, the petitioner’s filing cannot be considered a proper basis for a motion to reconsider.

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 reopen and motion to reconsider are dismissed. The approval of the employment-based immigrant visa petition remains revoked.

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<sup>2</sup> We note that all evidence in the record has been fully reviewed and discussed in our previous decisions of November 10, 2004; August 22, 2006; February 12, 2008; November 28, 2012; and August 15, 2013. While counsel asserts that we rely “solely on statements made by R.J. on September 22, 1992,” we disagree. Our previous decisions address additional evidence that corroborates the 1992 statement; most notably, the fact that the beneficiary and his wife had never lived together and the fact that during the time of their marriage his wife gave birth to a baby fathered by a different man. Those discrepancies remain unresolved.