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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: OFFICE: NEBRASKA SERVICE CENTER FILE:

JAN 14 2014

IN RE: Movant:
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,

A handwritten signature in black ink that reads "Elizabeth McCormack".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal on July 27, 2012 as abandoned and/or moot. The claimed successor-in-interest to the petitioner filed a motion to reopen/reconsider, which the AAO dismissed on June 21, 2013. The matter is now before the AAO on a second motion to reopen and motion to reconsider. The motion will be dismissed. The AAO's prior decision will be affirmed.

The motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. § 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

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.

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). All evidence submitted was previously available and could have been discovered or presented in the previous proceeding. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen. 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).

Accordingly, as the motion does not meet the substantive requirements of a motion to reopen or reconsider, it must be dismissed. 8 C.F.R. § 103.5(a)(4).

The record reveals that on October 15, 2007 [REDACTED] filed a Form I-140 on behalf of the beneficiary. The filing included an ETA Form 750 labor certification, filed by [REDACTED] on October 26, 2001 and approved September 6, 2007. The record did not contain evidence of the petitioner's ability to pay the proffered wage or the beneficiary's education and work experience required in the labor certification. On March 30, 2009, the director denied the petition without issuing a request for evidence or notice of intent to deny.¹

¹ If all required initial evidence is not submitted with the application or petition, or does not demonstrate eligibility, USCIS, in its discretion, may deny the petition. 8 C.F.R. § 103.2(b)(8)(ii)

On April 24, 2009, [REDACTED] filed an appeal of the director's decision. With the appeal the petitioner offered evidence of its ability to pay the proffered wage and the beneficiary's qualifications. On July 27, 2012, the AAO found that the petitioner was no longer in business and had presented no evidence of its continuing existence. Additionally, the AAO found that the beneficiary was not eligible to receive the protections of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21). Thus, the appeal was dismissed as moot.

Following the dismissal of the appeal, [REDACTED] filed a motion to reopen/reconsider the AAO's decision. On motion, the AAO found that [REDACTED] had not established a successor-in-interest relationship with the entity that filed the petition and labor certification. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the moving party is a different entity than the petitioner/labor certification employer, it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986). Thus, the AAO dismissed the motion.

In the current motion, [REDACTED] the movant, again asserts that it is a successor-in-interest to the entity that filed the petition and labor certification. Nevertheless, the movant has not established that it is a successor-in-interest to the entity that filed the petition and labor certification.

An entity may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

The movant did not establish a valid successor relationship for immigration purposes. The successor did not fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor.

Counsel appears to claim no such evidence exists by stating that the inability to proffer additional documentation of the relationship should not be fatal to the approval of the petition because the movant does not have access to the financial documents of the defunct petitioner. However, as discussed in the director's decision and in the previous AAO decisions, neither the petitioner nor the claimed successor-in-interest has provided the required initial evidence of its ability to pay as prescribed by 8 C.F.R. § 204.5(g)(2). In order to establish eligibility for the immigrant visa in all respects, the petitioner must support its claim with all necessary evidence, including evidence of ability to pay the proffered wage. Without such evidence, the movant has not established that it is the successor-in-interest to the petitioner.

The AAO also notes that the movant is not an affected party, as it not the petitioner. The term "affected party" means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. 8 C.F.R. § 103.3(a)(1)(iii)(B). The party affected in visa petition cases is the petitioner, and the beneficiary does not have standing to move to reopen the proceedings. *Matter of Dabaase*, 16 I&N Dec. 720 (BIA 1979). In this case the movant is also a party with no legal standing,

as it neither filed the petition nor the labor certification application and has not established that it is the successor-in-interest to the party that filed the petition and the labor certification. Thus the motion will also be dismissed for this reason.

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 is dismissed. The previous decision of the AAO will not be disturbed.