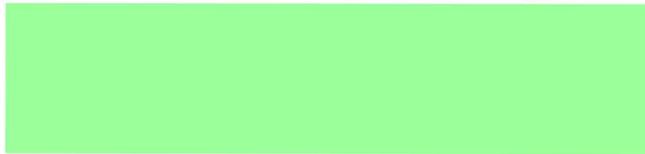


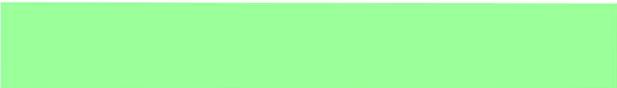


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 03 2014** 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:

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 director), and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will be denied.

The petitioner is an IT consulting and software development firm. It seeks to employ the beneficiary permanently in the United States as a computer programmer/analyst. As required by statute, the petition is accompanied by labor certification application approved by the United States Department of Labor (DOL). The petitioner seeks to classify the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). The director determined that the beneficiary does not have a U.S. bachelor's degree or foreign equivalent degree as required by the terms of the labor certification. The director denied the petition accordingly.

On appeal, counsel contended that the director failed to defer to the terms and plain language of the properly approved labor certification. Counsel asserted that the beneficiary's education and experience qualified him for the position. We found that, while the beneficiary's Master of Arts degree in political science from India is comparable to a bachelor's degree in the United States, the petitioner relied upon the beneficiary's experience in combination with his education to meet the minimum requirements of a Bachelor's degree in CIS, computer science or a related field.¹ We held that the labor certification did not state that lesser credentials, such as those possessed by the beneficiary, might be acceptable. Moreover, we found that copies of the online, print, internal referral program and posting notice did not adequately explain or define the acceptable alternative to the minimum requirement of a Bachelor's degree in CIS, computer science or a related field.

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."

On motion, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief. The Form I-290B refers to an attached brief which is identical to the brief considered and addressed by us on appeal. On April 8, 2014, we issued a request for evidence (RFE) to permit the petitioner to submit any new facts or documentation to support the claim that the petitioner intended the terms of the labor certification to require an alternative to a U.S. bachelor's degree or a single foreign equivalent degree.² To the date of this decision, the petitioner has failed to provide any new facts or documentation in response to that RFE.

¹ A Bachelor's degree in political science does not meet the requirements of the labor certification as the degree is not in CIS, computer science or a related field.

² The recruitment documentation in the record does not establish that the petitioner would accept anything less than a bachelor's degree in CIS, computer science or a related field. Additionally, the terminology set forth in section H.8 of the labor certification may be read to only require 1 year of experience, and is vague as to what would constitute an acceptable alternative to H.4 such that the minimum requirements of the labor certification may be less than two (2) years of experience.

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.

Motions for the reopening 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 to reopen 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 sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.