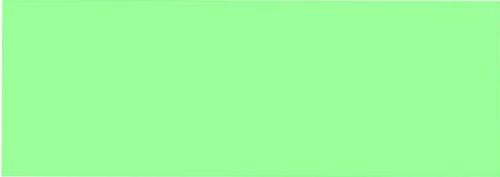


(b)(6)

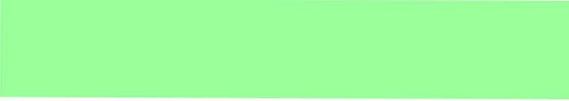
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **JUN 03 2014** OFFICE: TEXAS SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(i)

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 petition was denied by the Director, Texas Service Center¹ (director). The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The petitioner has filed another appeal. The AAO will treat the filing as a motion to reopen and to reconsider. The motions will be dismissed. The petition remains denied.

The petitioner describes itself as a polo and polo horse company. It seeks to employ the beneficiary permanently in the United States as a polo barn boss pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the beneficiary did not possess the minimum experience required to perform the offered position by the priority date, and denied the petition accordingly, on November 25, 2011.

On December 8, 2012, the AAO dismissed the appeal, concluding that the petitioner had failed to establish that the beneficiary possessed the required 24 months of experience in the job offered as of the priority date. The AAO additionally concluded that the record failed to establish that the petitioner had made a *bona fide* job offer.² This determination was based on the first duty of the job being the supervision and coordination of the workers' overall care of the horses. We noted that the petitioner had indicated on the Part 5, Item 2 of the Form I-140, Immigrant Petition for Alien Worker that it had zero (0) employees. The petitioner also indicated on C.5 of the labor certification that it had zero (0) employees, and it reported no salaries or wages paid on its 2008, 2009 or 2010 tax returns. Further, the petitioner's letter described the job as a polo horse trainer, not a polo barn boss as set forth in the labor certification.

The petitioner, through counsel, has filed a Form I-290B, Notice of Appeal or Motion. On Part 2 of the Form I-290B, counsel erroneously designated the filing as an appeal and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. It is noted that we do not exercise appellate jurisdiction over our own decisions. The AAO exercises appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). See DHS Delegation Number 0150.1(effective March 1, 2003). An appeal of an AAO appeal decision is not properly within our jurisdiction.

A motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed. No provision exists for U.S. Citizenship & Immigration Services (USCIS) to grant an extension to the petitioner to file evidence or arguments in the future. The fact that the petitioner on the Form I-290B incorrectly checked box B ("I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 30 days"), does not allow it to submit evidence beyond the 30 day period allowed for motions to reopen. 8 C.F.R. § 103.5(a)(1)(i).

¹ The record contains another employment-based petition [REDACTED] filed by the petitioner on May 4, 2012. The director has not rendered a final decision on this petition.

² The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this case, on Part 3 of the Form I-290B, counsel states that the beneficiary's qualifications meet the experience required by the labor certification. Counsel adds that a polo and polo horse company cannot be run without a supervisor, and that the petitioner's 2010 tax return does list a cost of labor that includes compensation to polo horse grooms who require supervision. Counsel adds that a brief would be submitted within 30 days. This office has received nothing further in support of this filing in over sixteen months.

The petitioner submitted no evidence with the filing that supports the assertions made in the Form I-290B or addresses the deficiencies set forth in our December 8, 2012, decision. Therefore, we find that the petitioner's filing fails to qualify as a motion to reopen that is supported by affidavits or other evidence and fails to qualify as a motion to reconsider, which is supported by any pertinent precedent decisions establishing that the dismissal of the appeal was based on an incorrect application of law or Service policy.

Based on the foregoing, we reaffirm the previous dismissal of the appeal on December 8, 2012.

The burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motions to reopen and to reconsider are dismissed. The prior decision of the AAO dated December 8, 2012 is affirmed. The petition remains denied.