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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: **MAY 05 2014** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

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 Center (director). The petitioner appealed the denial to the Administrative Appeals Office (AAO), and, on September 4, 2013, the AAO dismissed the petitioner's appeal. Counsel to the petitioner filed a motion to reopen the AAO's decision to dismiss the appeal. The AAO additionally considered the motion as a motion for reconsideration and dismissed the motions on February 21, 2014. The matter is now before the AAO on a second motion to reopen and motion to reconsider. The AAO will dismiss the motions.

The director had denied the petition on March 1, 2012. He determined that the beneficiary did not possess the requisite educational requirements as of the December 29, 2010, priority date established by the Application for Permanent Employment Certification (ETA Form 9089) certified by the Department of Labor (DOL) on January 19, 2011.

On September 4, 2013, the AAO dismissed the petitioner's appeal following the petitioner's response to the AAO's Notice of Intent to Dismiss (NOID) issued on June 3, 2013. In the NOID, the AAO had discussed *inter alia*, the discrepant four credentials evaluations submitted by the petitioner in support of the contention that the beneficiary possessed a foreign equivalent bachelor's degree to a U.S. bachelor's degree rather than a 3-year Indian bachelor's degree and an unaccredited Indian post-secondary diploma. The AAO dismissed the appeal finding that the beneficiary did not qualify for the visa classification as a third preference professional because he does not possess a U.S. Bachelor's degree or a single foreign equivalent degree from a college or university. The AAO concluded that the petitioner had failed to establish that the beneficiary's 3-year Indian Bachelor's degree and his diploma from the [REDACTED] represented a foreign equivalent degree to a U.S. bachelor's.

On February 21, 2014, the AAO dismissed the petitioner's motion to reopen and additionally considered it as a motion to reconsider. 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). The motion must show that the new material evidence could not have been discovered and presented at the time of original decision, but not originating after the decision. *See INS v. Doherty*, 502 U.S. 314 (1992). 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 its decision, the AAO noted that the petitioner's counsel had submitted a letter and copies of documentation already provided to the underlying record. The AAO noted that the documentation could not be considered 'new' under 8 C.F.R. § 103.5(a)(2) and did not qualify as a basis for a motion to reopen. The AAO further concluded that the motion had not been accompanied by arguments based on precedent decisions to persuasively establish that the decision was incorrect based on an incorrect application of law or Service policy. The AAO noted that no precedent decisions had been cited and other evidence not already addressed by the AAO was not included.

The petitioner, through counsel has filed a second motion to reopen and motion to reconsider. Evidence submitted consists of counsel's letter dated March 6, 2014, which is virtually identical to his letter submitted with the first motion. The letter is accompanied by a copy of the [REDACTED]

evaluation dated March 12, 2012, the unsigned [REDACTED] evaluation, dated March 12, 2012, a copy of the [REDACTED] Inc.'s evaluation dated December 15, 2011, and a copy of the [REDACTED] letter, dated January 7, 2003. These documents were previously submitted to the underlying record and previously addressed by the AAO in its NOID dated June 3, 2013 and its September 4, 2013, decision dismissing the appeal. The AAO has again reviewed the contentions of the motions but finds no basis to reverse its prior decisions. The motions do not present new evidence and do not advance any precedent decisions or misapplication of law or Service policy sufficient to regard the beneficiary's credentials as the foreign equivalent of a U.S. Bachelor's degree in CS, Eng. (any), Science (any), CIS, or MIS. The AAO has already addressed the documentation submitted with this motion and the petitioner's first motion. Based on the foregoing, the AAO reaffirms its previous dismissal of the petitioner's appeal and the dismissal of the petitioner's first motion to reopen and 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 motions, the movant has not met that burden. The motions will be dismissed.

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. Accordingly, the motions will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motions to reopen and reconsider are dismissed.