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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

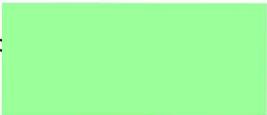


U.S. Citizenship  
and Immigration  
Services

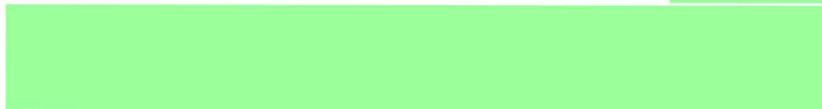


Date: **MAY 23 2014**

Office: TEXAS SERVICE CENTER

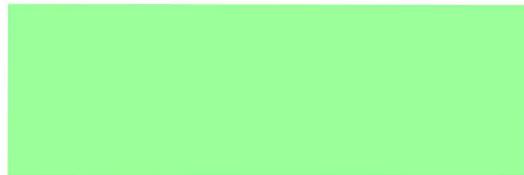
FILE: 

IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3) 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 preference visa petition was denied by the Director, Texas Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is again before the AAO. On the Form I-290B signed by counsel on January 23, 2013, counsel checked Box B, which states "I am filing an appeal"; however, we do not exercise appellate jurisdiction over our own decisions. We exercise 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 is not properly within our jurisdiction. However, despite the incorrect filing of the Form I-290B, we will consider this filing as both a motion to reopen and to reconsider. The motions will be dismissed.

The petitioner describes its business as one involving the sale of photographic accessories. It seeks to employ the beneficiary permanently in the United States as a sewer. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary met the experience requirements of the ETA Form 9089. The director denied the petition accordingly.

As set forth in the director's December 20, 2011 denial and subsequent appeal, the primary issue in this case is whether or not the petitioner has established that the beneficiary has 24 months of experience in the proffered position as required by the ETA Form 9089.

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 facts or evidence on motion that may be considered new under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen. Therefore, the filing does not meet the requirements of 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 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). As the petitioner has not alleged or identified any specific misapplication of law or policy by the AAO, this cannot be considered a proper basis for a motion to reconsider.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. As the motions to reopen and reconsider do not meet the applicable requirements, the motions shall be dismissed. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

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