



U.S. Citizenship
and Immigration
Services

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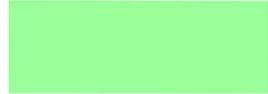


DATE:

OCT 24 2014

OFFICE: TEXAS SERVICE CENTER

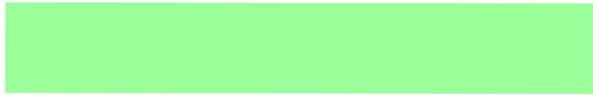
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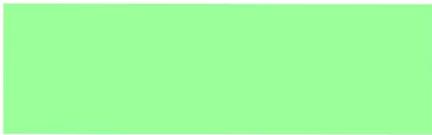
Petitioner:

Beneficiary:



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

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 Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. We granted a subsequent motion to reopen and reconsider and affirmed our decision to dismiss the appeal. The case is again before us on motion to reopen and reconsider. The motion will be granted, our previous decision will be affirmed in part and withdrawn in part. The appeal will be dismissed and the petition will remain denied.

The petitioner is a corporation that owns and operates an automotive service station. It seeks to permanently employ the beneficiary in the United States as an auto mechanic. The petitioner requests classification of 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).¹

A Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL), accompanies the petition. The priority date of the petition, which is the date an office within the DOL employment services system accepted the labor certification for processing, is April 27, 2001. *See* 8 C.F.R. § 204.5(d).

On April 28, 2009, the director denied the petition, concluding that the petitioner failed to establish its continuing ability to pay the beneficiary's proffered wage from the petition's priority date onward. After examining the annual net income and net current asset amounts stated on the petitioner's federal income tax returns from 2001 to 2007, the director found that the petitioner failed to demonstrate its ability to pay the annual proffered wage of \$46,300.80 in any of those years.

On appeal, we affirmed the director's decision and found that the petitioner had demonstrated sufficient net current assets to pay the proffered wage in 2008. We affirmed the director's finding that the petitioner had failed to establish its ability to pay the annual proffered wage from 2001 through 2007.

On the petitioner's first motion to reopen and reconsider, we again concluded that the petitioner had not established the continuing ability to pay the proffered wage as of the priority date and we affirmed our previous decision. Beyond our previous decision and the director's decision,² we also determined that the petitioner has not established that the beneficiary met the qualifications for the offered position.

¹ Section 203(b)(3)(A)(i) of the Act grants preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

² We may deny an application or petition that fails to comply with the technical requirements of the law, even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

On the current motion to reopen and motion to reconsider, counsel submits new evidence in the form of a new employment letter from the beneficiary's claimed former employer. The motion to reopen complies with the regulation at 8 C.F.R. § 103.5(a)(2) because it states new facts and is supported by documentary evidence.

The labor certification states that the offered position requires two years of experience in the job offered. The labor certification also states the job duties of the offered position as maintaining and repairing "European autos," including models by [REDACTED]. The beneficiary claimed to qualify for the offered position based on experience as an auto mechanic at [REDACTED] New York from February 1998 to January 2001.

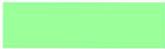
The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. See 8 C.F.R. § 204.5(l)(3)(ii)(A).

The record contains a letter signed by [REDACTED] dated April 11, 2001, on the letterhead of [REDACTED] stating that the beneficiary worked there as a European auto mechanic from February 1998 to January 2001. The letter describes the beneficiary's experience as maintaining and repairing "European trucks [REDACTED]"

In our previous decision, we noted that the 2001 experience letter from [REDACTED] does not contain the title of its signer as the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) requires. In addition, the beneficiary's described experience does not match the duties of the offered position on the labor certification. The experience letter states that the beneficiary maintained and repaired "European trucks," while the labor certification states that the offered position involves maintaining and repairing "European autos." Moreover, the experience letter from [REDACTED] does not state that the beneficiary maintained and repaired [REDACTED] autos as the job duties of the offered position require. The petitioner must resolve any inconsistencies in the record by independent, objective evidence. See *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Because the experience letter from [REDACTED] did not indicate that the beneficiary maintained and repaired "European autos," including models by [REDACTED] as the labor certification specifies, we determined that the petitioner had not established that the beneficiary possessed the required two years of experience in the job offered as of the petitioner's priority date. On the current motion to reopen, counsel submits a new employment letter from [REDACTED] dated September 18, 2013. Mr. [REDACTED] identified himself as the owner of [REDACTED] and clarified that the beneficiary's employment there from February 1998 to January 2001 involved working with the "maintenance and repair of 'European autos' such as [REDACTED]" in addition to maintenance and repair of European trucks.

After careful consideration, we find that the petitioner has demonstrated that the beneficiary meets the qualifications for the proffered job as set forth on the labor certification. Therefore, we withdraw



the portion of our previous decision relating to the beneficiary's qualifications for the offered job. However, it remains that our August 27, 2013, decision provided a thorough examination of the financial documentation submitted by the petitioner and an assessment of the petitioner's ability to pay the proffered wage in light of the totality of the circumstances in this individual case in accordance with *Matter of Sonogawa*, 12 I&N Dec. at 614-615. The petitioner has not contested our determination that the petitioner failed to establish its continuing ability to pay the beneficiary's proffered wage from the petition's priority date onward.

On motion to reopen and reconsider, the petitioner does not provide new facts with supporting documentation not previously submitted and does not assert that either we or the director made an erroneous decision through misapplication of law or policy. Nor does the petitioner cite to any precedent decisions. Therefore, the motion to reconsider does not meet the requirements of 8 C.F.R. §§ 103.5(a)(2) and (3) and is dismissed.

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.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is granted. Our decision dated August 27, 2013, is withdrawn in part, and affirmed in part. The appeal is dismissed. The petition remains denied.