

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **JAN 20 2015**

OFFICE: TEXAS SERVICE CENTER FILE [REDACTED]

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

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:

[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 Immigrant Petition for Alien Worker (Form I-140) was initially approved by the Director, Texas Service Center. Upon determining that the petition had been approved in error, the director served the petitioner with a notice of Intent to Revoke (NOIR) the approval of the petition. In the Notice of Revocation (NOR), the director revoked the approval of the preference petition. The matter was appealed to the Administrative Appeals Office (AAO), which dismissed the appeal on October 31, 2014. The matter is now before the AAO on a motion to reopen and reconsider.

The petitioner describes itself as a convenience store. It sought to employ the beneficiary permanently in the United States as a store manager.¹ As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Labor Certification² approved by the Department of Labor.

On September 19, 2003, the director revoked the petition's approval pursuant to Section 205 of the Act, 8 U.S.C. § 1155 based upon the determination that the petitioner failed to disclose to the Department of Labor (DOL) during the labor certification process that the beneficiary is related by marriage to the sole owner of the petitioner.

Our October 31, 2014 decision affirmed the revocation based on the familial relationship that was undisclosed during the labor certification process. The petitioner then filed a motion to reopen and reconsider our decision dismissing the appeal.

The record shows that the motion is timely. 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 United States Citizenship and Immigration Services (USCIS) 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Counsel submitted a letter with the Form I-290B in which he requested 90 days to file a brief in support of the motions to reopen and reconsider. The letter does not present facts or evidence that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis

¹Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, 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.

²The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. It is determined by the date that DOL accepted the filing of the ETA Form 9089 and is used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 indicates that it was accepted for processing on February 7, 2007, which establishes the priority date.

for a motion to reopen. The letter also does not contain any statement of how we legally erred in our previous decision.

The petitioner's motion does not meet applicable requirements. The petitioner stated that additional evidence would be submitted in 90 days. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. See 8 C.F.R §§ 103.5(a)(2) and (3). Accordingly, the motion must be dismissed for failing to meet applicable requirements.

Because the petitioner submitted no additional evidence nor submitted any precedent decisions to establish that the decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy, the motions must be denied.

ORDER: The motions to reopen and reconsider are denied. The petition remains denied.