



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUN 19 2015

FILE #:  
PETITION RECEIPT #:

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center (the director). The director denied two motions to reopen and reconsider, and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be denied and the petition will remain denied.

The petitioner describes itself as a landscaping business. It seeks to permanently employ the beneficiary in the United States as a landscaper. The petitioner requests classification of the beneficiary as a skilled worker 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).<sup>1</sup> The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is August 8, 2011. *See* 8 C.F.R. § 204.5(d). The director's decision denying the petition concluded that the petitioner did not establish its ability to pay the proffered wage.

On November 25, 2014, we found that the petitioner had not established its ability to pay the proffered wage. Beyond the decision of the director,<sup>2</sup> we found that the position was not permanent or full-time and that the beneficiary did not possess the required experience for the offered position.

The regulations at 8 C.F.R. § 103.5(a) provides, that “[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.”

On motion, the petitioner submits the Form I-290B, a “basis for the motion to reconsider,” a letter from the petitioner regarding the beneficiary's replacement of another worker and a copy of the other worker's 2011 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement. The motion to reconsider does not assert any error of law or cite any precedent decisions establishing that our previous decision dismissing the appeal was incorrect. We find that the petitioner has not filed a proper motion to reconsider.

The “basis for the motion to reconsider” is an unsigned addendum to Part 4 of the Form I-290B completed by the petitioner's counsel. Counsel contends that it has established its ability to pay the proffered wage through the replacement of another worker; the position is permanent and full-time; the inconsistencies we noted in our decision regarding the beneficiary's previous employment were due to a clerical error by his previous employer; and the beneficiary possesses the required two years of experience. While the addendum states reasons for the motion to reconsider, it is not supported by any pertinent precedent decisions to establish that our decision was based on an incorrect application

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<sup>1</sup> Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), 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.

<sup>2</sup> We may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center 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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

of law or Service policy based on the evidence of record at the time of the initial decision. Accordingly, the motion to reconsider will be denied.<sup>3</sup>

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion is denied, the proceedings will not be reconsidered and the petition remains denied.

**ORDER:** The motion is denied. Our previous decision is affirmed. The petition remains denied.

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<sup>3</sup> Even if the instant motion were considered as a motion to reopen, it would be denied. The new evidence submitted with the motion, including the 2011 Form W-2 of another worker and the petitioner's letter, do not establish the petitioner's ability to pay the proffered wage from the priority date onwards. Further, the assertions of counsel on the addendum to Form I-290B do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).