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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

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAR 01 2011**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO pursuant to a motion to reopen. The motion will be dismissed. The previous decision of the AAO will be affirmed. The petition will be denied.

The petitioner, a jeweler with four retail outlets that seeks to continue to employ the beneficiary as an accountant, filed this H-1B petition to continue the beneficiary's classification and extend his stay as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the appeal because she found that the petitioner (1) failed to establish that it is a United States employer within the meaning of 8 C.F.R. § 214.2(h)(4)(ii) as required by section 101(a)(15)(H)(i)(b) of the Act, and (2) failed to establish that the petitioner would employ the beneficiary in a specialty occupation. On appeal, counsel contested both findings. The AAO dismissed that appeal on October 3, 2005. The brief filed with the instant motion states that it is a motion to reopen. In it, counsel argued that the decision on appeal is incorrect and should be reversed.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, "*Requirements for motion to reopen. 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.*" Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.

On the motion counsel did not allege any new facts, but merely reiterated the petitioner's position that, based on the evidence presented, the visa petition should be approved. Motions for the reopening 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. *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 AAO will dismiss the motion for failure to meet the applicable requirements set forth in 8 C.F.R. § 103.5(a)(2).

The AAO also observes that the director noted, when she denied the visa petition, that the petitioner had lost its corporate status. The AAO observes, further, that records available on-line from the Texas Secretary of State indicate that the petitioner's corporate status was again forfeited on July 29, 2009 and remained forfeited very recently. The record contains no evidence that it has been reinstated. The record contains no indication that a corporation may legally continue to do business in Texas when it is not in good standing. The regulation at 8 C.F.R. 214.2(h)(11)(i)(B)(ii) states that the approval of any petition is immediately and automatically revoked if the petitioner goes out of business. The AAO will not approve a petition that is subject to automatic revocation. If the petitioner's submissions qualified as a motion, and if the petitioner's arguments pertinent to the substantive bases for denial prevailed, the petitioner would still be obliged to show that the petitioner

was legally able to conduct business when it submitted the visa petition, and is currently legally able to conduct business, in order for the petition to be approved.

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. Here, the petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The motion is granted. The AAO's decision of October 3, 2005 is affirmed. The petition is denied.