



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUL 27 2015**

PETITION RECEIPT #: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to be "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office, and we dismissed the appeal. The matter is again before us on a motion to reopen. The motion will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a six-employee "Procurement & Processors of Scrap Metal for Export" firm established in [REDACTED]. In order to continue to employ the beneficiary in what it designates as a "Logistics Analyst" position, the petitioner seeks to classify him 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 petition, finding that the evidence did not establish that the proffered position qualifies for classification as a specialty occupation position. We dismissed a subsequent appeal, affirming the Director's decision, and the petitioner filed the instant motion.

I. MOTION REQUIREMENTS

For the reasons discussed below, we conclude that this motion will be dismissed because the motion does not merit reopening.

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a USCIS officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), "*Processing motions in proceedings before the Service*," "[a] motion that does not meet applicable requirements shall be dismissed."

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "*Requirements for motion to reopen*," states:

A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence. . . .

This provision is supplemented by the related instruction at Part 3 of the Form I-290B, which states:¹

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence.

Further, the new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

II. ANALYSIS

The Labor Condition Application submitted to support the Form I-129 states that the proffered position, although titled a "Logistics Analyst" position, corresponds to Standard Occupational Classification (SOC) code and title 13-1161, Market Research Analysts and Marketing Specialists, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a wage Level I position.

In our decision issued on January 29, 2015, we found that the duties of the proffered position bear little resemblance to the duties of a market research analyst or marketing specialist, but that the work to be performed "is concerned with the logistics of acquiring and transporting scrap metal." We analyzed the proffered position as a logistician position.

The submission constituting the motion consists of the following: (1) the Form I-290B; (2) a letter, dated February 26, 2015, from [REDACTED] signing as the petitioner's president; (3) a brief; (4) numerous contracts for the sale of scrap metal; and (4) an evaluation of the beneficiary's qualifications, dated January 15, 2015.

In his February 26, 2015 letter, [REDACTED] contends that the proffered position is a market research analyst position. Mr. [REDACTED] asserts that the beneficiary would determine, based on his assessment of the logistics and cost of transporting scrap metal to various locations as well as the price scrap metal would fetch at those locations, to whom the petitioner should sell its scrap metal. Mr. [REDACTED] made the same assertion in the brief. Upon review, we find that the petitioner did not provide any new facts in this motion.

¹ The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission.

The evaluation submitted, although it was produced after the decision of denial was issued, does not allege any new facts. It only addresses the beneficiary's qualifications, which are unchanged. Further, an evaluation of the beneficiary's qualifications bears no direct relevance to whether the proffered position qualifies for classification as a specialty occupation position, which was the issue upon which denial of the visa petition was based.

All of the contracts for sale of scrap metal appear to have been executed by the petitioner. None were executed by the other parties to those contracts. It is unclear that they represent any business deals the petitioner has actually transacted. In any event, even if they were found to be competent evidence, they would only be evidence of international scrap metal sales. The petitioner asserted, in its case in chief, that it transacts international scrap metal sales. Even if this matter were in dispute, and even if those contracts were executed by both parties, they would not be "new" facts, in the sense contemplated by 8 C.F.R. § 103.5(a)(2).

[REDACTED]'s letter and brief do not allege new facts. They assert that the proffered position is a market research analyst position, which has been the petitioner's position throughout this proceeding. Additionally, they contain no new facts that render that assertion more likely than it was when we issued our decision dismissing the appeal.

Further, even if one or more of the submissions with the motion were deemed "new," they would not be persuasive evidence for the proposition that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. As such, the petitioner has not established that the evidence submitted on this motion would change the outcome of this case if the proceeding were reopened.

"There is a strong public interest in bringing [a case] to a close as promptly as is consistent with the interest in giving the [parties] a fair opportunity to develop and present their respective cases." *INS v. Abudu*, 485 U.S. 94, 107 (1988). 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" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden.

III. CONCLUSION

The petitioner should note that, unless U.S. Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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). Here, that burden has not been met. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and our previous decision will not be disturbed.

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NON-PRECEDENT DECISION

ORDER: The motion is dismissed.