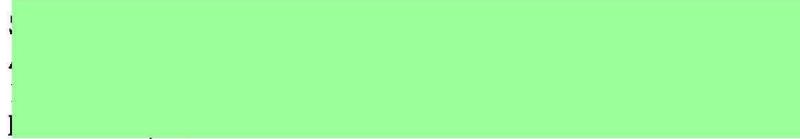


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

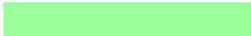


U.S. Citizenship
and Immigration
Services

(b)(6)



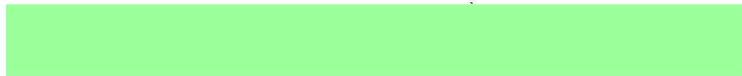
DATE: APR 02 2013

OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE:

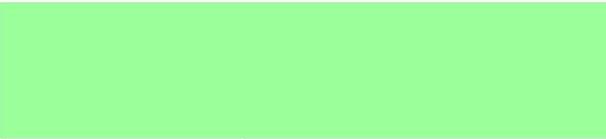
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:

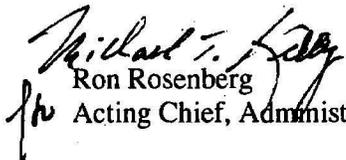


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director (the director) denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision in response to three subsequent motions to reconsider. The matter is again before the AAO on a fourth motion to reconsider. The motion will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a hotel franchise established in 2006. In order to employ the beneficiary in what it designates as a hotel franchisee trainee position for a period of 16 months,¹ the petitioner seeks to classify him as a nonimmigrant trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii).

As they have already been fully discussed in the AAO's prior decisions regarding this petition, the AAO will here repeat only such facts, law, and procedural history of this case as is necessary for understanding the present decision. The petitioner filed the instant petition on February 19, 2009, and the director denied it on June 5, 2009.² The AAO dismissed a subsequent appeal on June 30, 2010. The AAO affirmed its prior decision in response to counsel's first motion to reconsider, on September 22, 2011. The AAO affirmed its prior decision in response to counsel's second motion to reconsider on June 21, 2012. The AAO affirmed its prior decision in response to counsel's third motion to reconsider on December 13, 2012.³

¹ The AAO has noted in each of its four prior decisions that although the petitioner claimed the proposed training plan would last 16 months on the Form I-129, the supporting documentation stated that it would last for 14 months. The petitioner has once again opted to leave this inconsistency unaddressed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). For this reason alone, the petition could not be approved, even if the petitioner had overcome the director's grounds for denying this petition (which it has not).

² The director denied the petition on the basis of her determination that the petitioner had failed to demonstrate: (1) that similar training is unavailable in the beneficiary's own country; (2) that the training program does not deal in generalities with no fixed schedule, objectives, or means of evaluation; and (3) that it has sufficiently trained manpower to provide the training specified in the petition.

³ In graphic form, the procedural history of this case is as follows:

Action	Date
Petition filed	February 19, 2009
Director denies petition	June 5, 2009
AAO dismisses appeal	June 30, 2010
In response to first motion to reconsider, AAO affirms prior decision	September 22, 2011
In response to second motion to reconsider, AAO affirms prior decision	June 21, 2012
In response to third motion to reconsider, AAO affirms prior decision	December 13, 2012

Counsel filed the instant motion to reconsider on January 10, 2013. On the Form I-290B, Notice of Appeal or Motion, counsel requests that the AAO reconsider its December 13, 2012 decision. The scope of the AAO's review in the present matter is limited to the narrow issue of whether counsel documented sufficient reasons, supported by pertinent precedent decisions, to warrant the reconsideration of the AAO's decision issued on December 13, 2012.⁴ In that decision, the AAO found that counsel's submission submitted in support of her third motion to reconsider did not meet the requirements for a motion to reconsider described at 8 C.F.R. § 103.5(a)(1)(iii)(C) and 8 C.F.R. § 103.5(a)(3). As in her prior motions to reconsider, counsel cites *Matter of Chawathe*,⁵ and argues once again that the AAO failed to correctly apply the applicable standard of proof in its prior decisions when it determined that the petitioner had failed to meet its burden of proof.

Counsel has failed to document sufficient reason to warrant reconsideration of that decision. In its December 13, 2012 decision the AAO found that the petitioner, through counsel, had failed to satisfy two separate regulations, 8 C.F.R. § 103.5(a)(1)(iii)(C) and (2) 8 C.F.R. § 103.5(a)(3), and additionally found, as noted above at footnote 1, that the petitioner had failed to clarify conflicting factual information in the record of proceeding, despite having been placed on notice of the deficiency on three separate occasions.

Counsel does not address, let alone overcome, the first and third issues: she does not address the AAO's analysis under 8 C.F.R. § 103.5(a)(1)(iii)(C), and she does not address the conflicting factual information contained in the record of proceeding. With regard to the second issue – the AAO's analysis under 8 C.F.R. § 103.5(a)(4),⁶ which mandates the dismissal of a motion that does

⁴ Counsel makes several references to earlier decisions issued by the AAO and the director regarding this petition. However, those decisions are not at issue here. At Page 2, Part 2 of the Form I-290B, counsel specifically stated that the decision she seeks reconsideration of is the one issued by the AAO on December 13, 2012.

⁵ Counsel refers to *Matter of Chawathe* as a USCIS adopted decision and cites to it as such. While counsel is correct that *Matter of Chawathe* was made an adopted decision on January 11, 2006, it was designated as a precedent decision under 8 C.F.R. § 1003.1(i) on October 20, 2010. *Matter of Chawathe*, 25 I&N Dec. at 369. The AAO will therefore refer to and cite *Matter of Chawathe* as a precedent decision.

⁶ The regulation at 8 C.F.R. § 103.5(a)(3) states the following:

Requirements for motion to reconsider. 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.

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

[E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the

not meet the applicable requirements – it is noted that counsel submits the same arguments and assertions that have now been rejected by the director and the AAO multiple times. They need not, and will not, be addressed again.

A motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on an incorrect application of law or U.S. 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. *See* (requirements for a motion to reconsider) and the instructions for motions to reconsider at Part 3 of the Form I-290B. Also, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be “[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding.” Once again, counsel’s submission fails to meet these requirements.

It should be noted for the record that, unless U.S. Citizenship and Immigration Services directs otherwise, the filing of a motion to reopen 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, 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, that burden has not been met. As such, the petitioner’s motion will be dismissed, the proceedings will not be reconsidered, and the prior decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reconsider is dismissed. The petition is denied.

instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission.

At Page 2, Part 3, the Form I-290B states the following with regard to motions for reconsideration:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.