



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-F-P- INC.

DATE: APR. 8, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of brick paving services, seeks to employ the Beneficiary as an administrative manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition, and we dismissed the Petitioner's appeal. *See Matter of A-F-P Inc.*, ID# 1434643 (AAO June 22, 2018). We agreed with the Director that the Petitioner did not demonstrate its required ability to pay the position's proffered wage or the Beneficiary's qualifying experience for the offered position and the requested classification. We dismissed the Petitioner's subsequent motion to reopen and motion to reconsider. *See Matter of A-F-P- Inc.*, ID# 1982207 (AAO Nov. 23, 2018).

The matter is before us again on the Petitioner's motion to reopen and motion to reconsider.¹ Counsel's brief is the same as the brief previously submitted on motion, and the exhibits submitted on motion are identical to those submitted previously on motion.

Upon review, we will deny the motion to reopen and deny the motion to reconsider.

I. MOTION TO REOPEN

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Here, the evidence submitted on motion does not constitute new facts. The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board of Immigration Appeals' (the Board) definition of "new" at 8 C.F.R. § 1003.23(b)(3) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret

¹ A petitioner must meet the formal filing requirements of a motion and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

“new facts” to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute “new facts.” Here, the Petitioner reasserted the same facts and resubmitted the same evidence from its prior motion. The Petitioner has not shown proper cause to reopen the proceeding and, therefore, the motion to reopen will be denied.

II. MOTION TO RECONSIDER

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or Department of Homeland Security policy.

Here, the Petitioner neither alleges that our appellate decision misapplied law or policy, nor cites a pertinent decision, provision, or policy statement. The Petitioner has not shown proper cause for us to reconsider the proceeding and, therefore, the motion to reconsider will be denied.

III. CONCLUSION

The motions will be denied for the above stated reasons, with each considered an independent and alternative basis for the decision. 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. The Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of A-F-P- Inc.*, ID# 3845878 (AAO Apr. 8, 2019)