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Immigration and Naturalization Service

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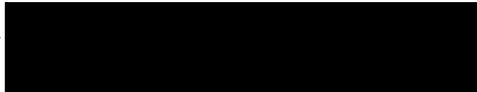
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ALB, 3rd Floor
Washington, D.C. 20536



File: EAC 01 251 53363 Office: Vermont Service Center

Date: FEB 10 2003

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal, affirming the director's decision. The matter is now before the Associate Commissioner on a motion which counsel terms a motion to reconsider. The motion will be dismissed, the previous decisions of the director and Associate Commissioner will be affirmed, and the petition will be denied.

The petitioner is a construction company. It seeks classification of the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3), and it seeks to employ the beneficiary permanently in the United States as a concrete mason. The director noted that the ETA 750 Application for Alien Employment Certification filed in this matter did not state that the position required any education or experience. As such, the director determined, based on 8 C.F.R. 204.5(1)(4), that the petition could not be approved as a petition for a skilled worker.

On motion, counsel contends that the failure to state any training requirement on the ETA 750 was a typographical error. In addition, counsel submits a letter, dated June 4, 2002, from a Regional Administrator of the Department of Labor, stating that the department would approve a petition claiming a requirement of up to four years of experience for the proffered position.

8 C.F.R. 103.5(a) states, in pertinent part:

(2) *Requirements for a 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.

(3) *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.

(4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed.

Counsel's argues that the failure to record the experience

requirement was a typographical error. However, counsel made that same argument on appeal. Therefore, the argument, cannot be construed as a new fact within the meaning of 8 C.F.R. 103.5(a).

Counsel apparently submits the June 4, 2002 letter from the Department of Labor, described above, as evidence that the ETA 750 would have been approved, if it had included an experience requirement. That matter is not at issue and is not a new fact within the meaning of 8 C.F.R. 103.5(a).

Counsel states no new facts supported by affidavits or documentary evidence. As such, the motion does not meet the requirements applicable to a motion to reopen.

Counsel cites no precedent decisions to establish that the decision of denial was based on an incorrect application of law or Service policy and that the decision was incorrect based on the evidence of record at the time that decision was rendered. As such, the motion does not meet the requirements applicable to a motion to reconsider.

Because the motion does not meet applicable requirements, it shall be dismissed pursuant to 8 C.F.R. 103.5(a)(4). The previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed. The Associate Commissioner's decision of June 19, 2002 is affirmed. The petition remains denied.