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U.S. Citizenship
and Immigration
Services

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FILE: EAC 02 222 53855 Office: VERMONT SERVICE CENTER Date: APR 16 2005

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:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

cc: [Redacted]

DISCUSSION: The service center director denied the nonimmigrant visa petition. The petitioner filed an appeal, which was denied by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed. The petition will be denied.

The attorney of record in this petition is Bruce A. O'Neill, who filed a Notice of Entry of Appearance (Form G-28) with a brief and other materials in appealing the service center's denial of the petition. The instant motion was filed by Emily M. Cohen, of Cohen, Fluhr & Gonzalez, P.C., but without the required Notice of Entry of Appearance (Form G-28). All representations will be considered, but the AAO's decision on the instant motion will be sent to Bruce O'Neill, the attorney of record. A copy will be sent to Emily Cohen.

The petitioner provides insurance and financial services to a Korean-American clientele. It seeks to employ the beneficiary as an administrative assistant/technical writer/translator and to classify her as a nonimmigrant worker in a specialty occupation 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). The director denied the petition on the ground that the proffered position is not a specialty occupation. The AAO denied the appeal on the same ground.

Motions to reopen or reconsider are governed by regulations at 8 C.F.R. § 103.5. As provided in 8 C.F.R. § 103.5(a)(1), "when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision." The requirements of a motion to reopen are specified in 8 C.F.R. § 103.5(a)(2):

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.

The requirements of a motion to reconsider are specified in 8 C.F.R. § 103.5(a)(3):

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 [Citizenship and Immigration Services] policy.

In support of the motion the petitioner submitted a letter essentially restating previous arguments that the proffered position is a specialty occupation because the specialized nature of its duties requires a baccalaureate or higher degree in English and literature or a related field, and that the beneficiary is qualified to perform the services of the position because she satisfies the degree requirement. In its letter, however, the petitioner did not state any new facts, supported by affidavits or documentary evidence, as required in a motion to reopen. Nor did the petitioner state any reasons for reconsideration, supported by precedent decisions, to establish that the decision was based on an incorrect application of law or policy, as required in a motion to reconsider. Thus, the petitioner's submission does not satisfy the requirements of either a motion to reopen or a motion to reconsider and does not show proper cause for favorable action by the AAO.

As provided in 8 C.F.R. § 103.5(a)(4): "A motion that does not meet the applicable requirements shall be dismissed." Accordingly, the petitioner's motion to reopen or reconsider must be dismissed.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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

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A handwritten signature in black ink, appearing to be the initials 'JAV' with a checkmark-like flourish at the end.