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U.S. Citizenship  
and Immigration  
Services

[REDACTED]

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FILE: WAC 02 202 50543 Office: CALIFORNIA SERVICE CENTER Date: **FEB 25 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 documents 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

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed a motion to reconsider which the AAO dismissed. The matter is again before the AAO on motion to reconsider. The motion will be dismissed.

The petitioner is a school that seeks to employ the beneficiary as a kindergarten teacher. The petitioner endeavors to classify the beneficiary 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 on the basis that the beneficiary was not qualified to perform a specialty occupation. The AAO affirmed the director's findings.

The first motion to reconsider was dismissed because the beneficiary, not an authorized representative of the petitioner, signed the Form G-28, Entry of Appearance as Attorney or Representative that was submitted in conjunction with the motion. On the instant motion, new counsel provides a G-28 signed by the petitioner and requests 30 days to file his brief in support of the motion, in order to retrieve a copy of the file from the petitioner's former counsel.

Counsel's submission of additional evidence does not satisfy the requirements of a motion to reopen or a motion to reconsider. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 policy. 8 C.F.R. § 103.5(a)(3).

On motion, counsel submits a new Form G-28. This is not considered to be a "new fact" as required by the law. Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. *See* 8 C.F.R. § 1003.2(c)(1). Here, no evidence in the motion contains new facts that were previously unavailable. The document submitted on motion could have been submitted at an earlier date. Accordingly, the AAO is not swayed by counsel's claim that this evidence is "new" for the purpose of a motion to reopen. There is also nothing in the record that contains evidence regarding an incorrect application of law or policy.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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. The petitioner has not met that burden.

**ORDER:** The motion is dismissed. The previous decision of the AAO, dated July 22, 2002, is affirmed. The petition is denied.