

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

DI

APR 26 2007

FILE: LIN 03 273 51319 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

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:

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, Chief
Administrative Appeals Office

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

The petitioner is a corporation engaged in information technology and solutions, employs the beneficiary as an electronics engineer, as authorized by a previously approved petition to employ the beneficiary as an H-1B 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). In order to continue this employment beyond the period approved in the initial petition, the petitioner endeavors to continue the beneficiary's H-1B classification and extend his stay.

The director denied the petition on the basis that the petitioner had failed to establish that the beneficiary would actually perform the work in the proffered position, which the petitioner asserts to be that of an electronics engineer. The director focused on deficiencies in the petitioner's response to the director's request for additional evidence (RFE). The director noted that the petitioner failed to describe the projects upon which the beneficiary would work, and failed to provide related work orders or contracts. The director stated, in part: "Absent the actual contracts with work orders, the Service cannot find that the beneficiary will be performing any of the duties claimed." Also, the director declared that the evidence of record did not establish that the petitioner had sufficient office space to employ the beneficiary in-house at the beneficiary's corporate headquarters. The AAO affirmed the director's findings. On motion to reconsider, counsel states that the proffered position is a specialty occupation and prays that the petition be approved.

A motion to reconsider must: (1) 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 CIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

In its motion to reconsider, the petitioner addresses the prior determination of the AAO and explains the reason for its description of the job duties placed of record in the prior proceeding, which the AAO found to be inadequate to qualify the offered position as a specialty occupation. In asking that the decision be reconsidered, the petitioner sets forth its reasons for reconsideration stating that the prior job description submitted and other evidence of record qualified the position as a specialty occupation. The reasons presented for reconsideration, however, are not supported by precedent decisions which establish that the decision was based on an incorrect application of law or CIS policy. Nor did the petitioner present additional information or otherwise establish by the record of proceedings that the prior AAO decision was incorrect based on the evidence of record at the time of the initial decision. The petitioner did not offer further facts about the duties of the position in the context of its business. The record reflects, and the prior decision correctly states, that the petitioner failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

LIN 03 273 51319

Page 3

ORDER: The motion is dismissed. The previous decision of the AAO dated October 18, 2005 is affirmed.
The petition is denied.