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**U.S. Citizenship
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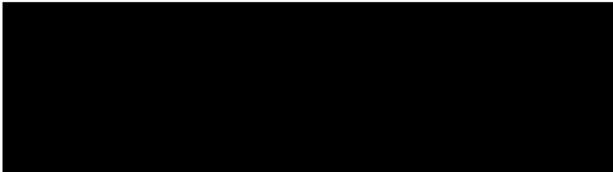


FILE: WAC 02 204 50210 Office: CALIFORNIA SERVICE CENTER Date: **AUG 06 2007**

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:



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 reopen or reconsider. The motion will be dismissed.

The petitioner is a textile printing business that seeks to employ the beneficiary as a laboratory manager. 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 is not qualified to perform a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel states that the AAO made a number of factual and legal errors in its decision. Counsel states further that various assertions made by the AAO are not supported by case law, regulation, or any authority. Although counsel checked the block indicating that he would be sending a brief and/or evidence to the AAO within 30 days, a motion to reopen must be supported by affidavits or other documentary evidence at the time of filing. It is also noted that no further documents have been received by the AAO to date. The record is considered complete.

Counsel's assertions on motion do not satisfy either the requirements of a motion to reopen or a motion to reconsider. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). 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: (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 Citizenship and Immigration Services (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).

As discussed above, counsel states on motion that the AAO made a number of factual and legal errors in its decision. Counsel's statement, however, is not persuasive. As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. 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. § 1003.23(b)(3). Here, the motion contains no evidence entailing new facts that were previously unavailable. Further, the record does not contain affidavits or other documentary evidence in support of a motion to reopen. 8 C.F.R. § 103.5(a)(2). As referenced above, counsel's letter in support of the motion is not evidence but simply assertions and as mere assertions are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. at 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503.

The evidence also fails to satisfy the requirements of a motion to reconsider. Although counsel states that the decision to deny the petition was an incorrect application of the law, he does not support his assertion by any pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record.

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 August 18, 2005, is affirmed. The petition is denied.