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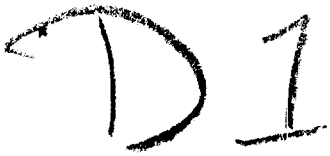
U.S. Citizenship and Immigration Services



FILE: EAC 02 037 55983 Office: VERMONT SERVICE CENTER Date: APR 21 2005

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:

SELF-REPRESENTED

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 matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a law firm that seeks to employ the beneficiary as a paralegal. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation. The AAO affirmed the director's findings.

On motion, the petitioner states, in part, that the proffered position of paralegal entails translation duties. The petitioner states further that the beneficiary must possess an in-depth knowledge of the Chinese and American cultures and languages. Counsel submits additional evidence, including: an excerpt from the *Interpreter Releases*, Vol. 79, page 722, dated May 13, 2002; two job postings; a copy of the *Directory of NYC's Translators* from the website at [illegible]; information from the website of the Princeton Review at http://www.princetonreview.com; and samples of the petitioner's translations.

The petitioner's submission of additional evidence does not satisfy either 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: (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).

On motion, the petitioner submits evidence that was previously available and contends that the AAO neglected to consider the translating duties of the proffered position. The petitioner'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). It is noted that the AAO decision considered the beneficiary's translating duties as part of the job duties presented in the petition. Here, no evidence in the motion contains new facts that were previously unavailable. The information from the various websites was previously available. Furthermore the two job postings are unrelated to the proffered position. Neither of the advertising employers is a law office. It is also noted that samples of the petitioner's translations were previously available. Accordingly, this evidence is not new for the purpose of a motion to reopen.

The evidence also fails to satisfy the requirements of a motion to reconsider. Although the petitioner states that the case was analyzed inappropriately, 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 September 4, 2003, is affirmed. The petition is denied.