PUBLIC COPY

D2

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: LIN-01-232-55065 Office: VERMONT SERVICE CENTER Date: DEC 31 2003

IN RE: Petitioner:
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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the nonimmigrant visa petition. The director subsequently approved the petition on a motion to reopen and certified his decision to the Administrative Appeals Office (AAO) for review. The AAO withdrew the director's decision and denied the petition. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be dismissed.

The petitioner provides soccer club management, coaching, and information training. It employs 2 persons and has a gross annual income of $422,146. It seeks to employ the beneficiary as a director of coaching. The director initially denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation, and subsequently approved the petition on a motion to reopen and certified his decision to the Administrative Appeals Office (AAO) for review. The AAO reversed the director's decision and denied the petition.

On motion, counsel states that the AAO failed to review evidence in the record. Counsel asserts that the AAO failed to consider a key piece of evidence, the 60-page document entitled "PSA Summer Training Program 2002." Counsel states that the petitioner's correspondence, dated April 11, 2002, clearly indicated that one of the beneficiary's duties was to prepare and implement this document.

Counsel avers that the AAO ignored over 10 years of Immigration and Naturalization Service (INS) and Nebraska Service Center precedent decisions approving H-1B petitions for director of coaching positions. Counsel states that the petitioner had submitted seven previous approvals from the same service center for virtually identical positions, and the AAO's decision to deny the immediate petition departed from prior interpretation. Along with this motion, counsel resubmits the approval notices, the I-129 petitions, and the letters from the petitioning entities that accompanied the petitions.

Counsel maintains that the AAO arbitrarily ignored INS regulations, that allow for education equivalency through a combination of education or experience, or both, when the AAO stated as a reason to deny the petition the fact that the previously approved petitions reveal that experience is the only requirement to perform the position's duties. Counsel claims that the AAO, referring to the seven previously approved petitions, stated that only one of the beneficiaries of the approved petitions possesses a bachelor's degree in physical education or a related field, and that the other beneficiaries have years of experience as soccer coaches - the equivalent to a

bachelor's degree in physical education. Counsel states that the Nebraska Service Center had approved the seven cases based on the petitioner's assertions; that each case had an independent expert opinion/evaluation; and that each beneficiary must have had experience considered equivalent to a bachelor's degree. Counsel asserts that, the fact that the seven previous petitions were approved, even though some persons possessed only the equivalent of a bachelor's degree, has no relevance to the issue of whether the proffered position is a specialty occupation.

Counsel states that the AAO acted arbitrarily and capriciously, ignoring substantial evidence in the form of expert opinions by attacking the expert's credentials. Counsel states that in denying the petition, the AAO stated:

> While it appears that the beneficiary is well qualified to perform the duties of a soccer coach and director of coaching, the petitioner has not shown that the proffered position is a specialty occupation or that the beneficiary qualifies to perform the duties of a specialty occupation.

Counsel, on motion, asserts that, although the petitioner disagrees with the AAO's criticism of the five expert opinions, regarding whether the proffered position qualifies as a specialty occupation, this issue can be addressed by the following additional expansive expert opinions:

- a detailed letter from Professor Rhonda Clements, Ed.D., Professor of Physical Education, Coordinator, Graduate Program in Physical Education, Hofstra University, which confirms that the beneficiary's seventeen years of experience equate to a bachelor's degree in sports management;
- a copy of Professor Clements' resume;
- a letter from Sylvia J. Giallombardo, Ph.D., Vice Provost for Academic Affairs, Hofstra University, confirming that Professor Clements has competence to evaluate the credentials of applicants and the authority to assess the specialized area of physical education and related sport areas;
- a letter from Professor G. Lynn Lashbrook, Ed.D., Professor, Sports Management, Nova Southeastern University, confirming that the beneficiary's seventeen years of experience equate to a bachelor's degree in sports management;

- a copy of Professor G. Lynn Lashbrook's resume; and
- a letter from William Alvarez, Ed.D., Executive Dean for Academic Affairs, Nova Southeastern University, confirming Professor Lashbrook's competence to evaluate the credentials of applicants and authority to assess the specialized area of physical education and related sport areas.

Counsel's statements are not persuasive, and his 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 Service (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, counsel submits new evidence and previously submitted evidence. With respect to the previously submitted evidence, counsel contends that the AAO did not consider the information. Counsel's statement, however, is without merit. 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 have been previously unavailable and could not have been discovered earlier in the proceedings. *See* 8 C.F.R. § 3.2(c)(1). Here, the previously submitted evidence contains no new facts that were previously unavailable. The documents submitted on motion are the same documents that the petitioner submitted to the director. Accordingly, the AAO is not swayed by counsel's claim that, because the AAO did not consider the evidence in prior proceedings, this evidence is now "new" for the purpose of a motion to reopen.

Regarding the submission of new evidence, counsel submits resumes and letters from Professor Rhonda Clements and Professor G. Lynn Lashbrook, and letters from Ms. Sylvia J. Giallombardo, Vice Provost for Academic Affairs; and Mr. William Alvarez, Executive Dean for Academic Affairs. Counsel also submits a letter and resume from Mr. Ian Barker; a page describing Mr. Buzz Lagos' experience; a letter and resume from Mr. John Tudor; a letter from Mr. Manual Lagos; a letter from Mr. John Carpenter; a letter from U.S. Senator Paul Wellstone; and a

letter from Congressman Jim Ramstad. The letters, resumes, and page about Mr. Buzz Lagos do not constitute "new" evidence because the letters, resumes, and page about Mr. Buzz Lagos were previously available.

The evidence also fails to satisfy the requirements of a motion to reconsider. Although counsel states that the AAO's decision to withdraw the director's approval of the petition was an incorrect application of the law, counsel does not support his assertion by any pertinent precedent decisions, or establish that the AAO misinterpreted the evidence of record. Counsel's reliance on prior approved petitions, allegedly for similar positions, is misplaced. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The AAO is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). In addition, the Administrative Appeals Office is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Nor does counsel establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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 June 19, 2002, is affirmed. The petition is denied.