

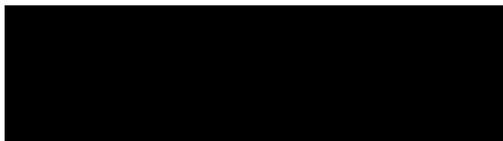
PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

DA

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



File: SRC 00 103 52449 Office: Texas Service Center

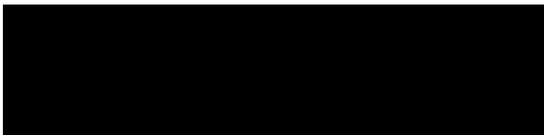
Date: JUN 19 2003

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:



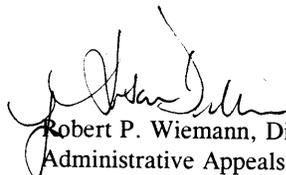
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which 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 nonimmigrant visa petition was denied by the Director, Texas Service Center, and a subsequent appeal dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5. The motion shall be dismissed. The previous decision of the AAO will be affirmed.

The petitioner is a Georgia corporation operating an apparel and accessories retail store with no current employees and an undisclosed estimated gross income. It seeks to employ the beneficiary as a business manager for a period of three years. The director denied the petition finding that the petitioner had failed to establish that the position offered to the beneficiary was a specialty occupation. That decision was appealed to the AAO who dismissed the appeal, finding that the petitioner failed to establish that the proffered position was a specialty occupation.

The regulation at 8 C.F.R. § 103.5 provides in pertinent part that "a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. See 8 C.F.R. § 3.23 (3); *INS v. Doherty*, 502 U.S. 314, 323 (1992); *INS v. Abudu*, 485 U.S. 94, 100 (1988); and *Matter of Coelho*, 20 I&N Dec. 464, 472 n.4 (BIA 1992) (quoting *Taylor v. Illinois*, 484 U.S. 400, 414 n.18 (1988)). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5 (a)(4).

In support of the motion, the petitioner provides additional job responsibilities to be assigned to the beneficiary that were not originally submitted for consideration. No additional facts in support of the motion to reopen are presented. The additional job responsibilities described by counsel are not "new" facts that were unavailable or could not have reasonably been discovered during the prior proceeding. Motions for the reopening of immigration proceedings are disfavored for the same reasons that petitions for rehearing and motions for a new trial are disfavored on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). The party moving to reopen the proceeding bears a heavy burden. In this instance, that burden has not been met. The motion to reopen will be dismissed.

Counsel further asks that the Bureau's prior decision be reconsidered and alleges that the decision was based on an incorrect application of law. "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 Service policy." 8 C.F.R. 103.5 (a) (3). In support of that assertion counsel cites *Matter of Michael Hertz Associates*, 19 I&N 558 (1988) for the proposition that the position offered the beneficiary requires knowledge, both theoretical and applied, that is almost exclusively obtained through studies and extensive field experience. Counsel states that the job requirements are so complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, or over 12 years experience in the field of business administration.

In support of his assertions counsel lists a new set of job responsibilities not previously submitted for consideration. Those responsibilities are as follows:

Aids executive in staff capacity by coordinating office services, such as personnel, budget preparation and control, house-keeping, records control, and special management studies: Studies management methods in order to improve workflow, simplify reporting procedures, or implement cost reductions. Analyzes unit operating practices, such as record keeping systems, forms control, office layout, suggestion systems, personnel and budgetary requirements, and performance standards to create new systems or revise established procedures. Studies methods of improving work measurements or performance standards. Coordinates collection and preparation of operating reports, such as time-and-attendance records, terminations, new hires, transfers, budget expenditures, and statistical records of performance data. Prepares reports including conclusions and recommendations for solution of administrative problems. Issues and interprets operating policies. Reviews and answers correspondence. May assist in preparation of budget needs and annual reports of organization. May interview job applicants, conduct orientation of new employees, and plan training programs. May direct services, such as maintenance, repair, supplies, mail and files. May compile, store and retrieve management data, using computer.

These job responsibilities are substantially different from those previously submitted to the Bureau for consideration. The petitioner seeks to define the job as a specialty occupation under a new set of job responsibilities. Eligibility must be established however, at the time of filing the petition. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Ry. Comm. 1978). The petitioner has failed in this instance to establish that the

Bureau's prior decision was based on an incorrect application of law or policy. The petitioner has not established that the prior decision was incorrect based on evidence of record at the time of the initial determination.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been sustained and petitioner's motion must be dismissed.

ORDER: The motion is dismissed. The previous decisions of the director and the AAO are affirmed.