

U.S. Department of Homeland Security

Citizenship and Immigration Services

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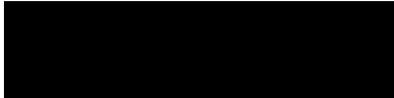
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS, 3/F  
425 I Street, N.W.  
Washington, DC 20536



001 27 2003

File: EAC 01 124 52317 Office: VERMONT 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:



**Identifying data deleted to prevent costly unwarranted invasion of personal privacy**

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion shall be dismissed.

The petitioner is a New Jersey family practice medical group practice with nine employees and a net annual income of \$800,000. It seeks to temporarily employ the beneficiary as an accountant for a period of three years. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation. The AAO affirmed this decision.

The petitioner submitted a timely Form I-290B on July 2, 2002 and requested 90 days to submit a brief and/or evidence to the AAO. Counsel also requested an opportunity for oral argument. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three days is added to the proscribed period. 8 C.F.R. 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements. The petitioner stated that additional evidence would be submitted in 90 days. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. See 8 C.F.R. §§ 103.5(a)(2) and (3). Accordingly, the motion must be dismissed for failing to meet applicable requirements.

In turning to the petitioner's request for oral argument, the regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. §§ 103.3(b) and 103.5(a)(7). In this instance, the petitioner identified no unique factors or issues of law to be resolved. In fact, the petitioner set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this case. Consequently, the request for oral argument is denied.

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The motion is dismissed.