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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



SEP 04 2003

File: EAC-00-094-51905 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: SELF-REPRESENTED

**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. A subsequent motion to reopen and reconsider was granted by the AAO, and its previous decision was affirmed. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a financial technology business that employs one person and has a gross annual income of \$150,000. It seeks to employ the beneficiary as a software engineer. The director denied the petition on the basis that the petitioner had failed to show that the beneficiary is qualified to perform the duties of a specialty occupation.

On second motion, the petitioner states, in part, that the following information has been repeatedly ignored by the Bureau:

- (a) As a small business - it requires from an employee to have a wider range of talents than a larger company would require[;] [and]
- (b) As a new technologies firm - it creates not only new products and services but also new specialty occupations.

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 Bureau 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 second motion, the petitioner does not address the issue of the beneficiary's qualifications, which was the reason for the denial of the petition. As such, the petitioner's statement 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 have been previously unavailable and could not have been discovered earlier in the proceedings. See 8 C.F.R. § 3.2(c)(1). Here, no evidence in the motion contains new facts that address the reason for denial.

Accordingly, the AAO is not swayed by the petitioner's claim that, because neither the director nor the Administrative Appeals Office considered the evidence in prior proceedings, this evidence is now "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 in its decision to deny the petition, the Bureau repeatedly ignored the above information, he does not support his assertion by any pertinent precedent decisions, or establish that the director 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 decisions of the AAO, dated July 19, 2001 and June 19, 2002, are affirmed. The petition is denied.