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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 066 51523 Office: CALIFORNIA SERVICE CENTER Date: APR 21 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Director of the California 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 motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a business providing wholesale travel and travel consolidation services that seeks to employ the beneficiary as a public relations specialist. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation. In dismissing the appeal, the AAO affirmed the director's decision.

On motion, counsel states that the AAO did not consider the submitted evidence that established that similar organizations require a bachelor's degree. Counsel further states that the regulations do not state that the submitted advertisements must represent organizations in the same industry as the petitioner. According to counsel, public relations specialist positions are recognized by various organizations as requiring a bachelor's degree. Counsel states that the AAO abused its discretion in requiring the petitioner show that it has in the past required the services of persons holding a bachelor's degree in a specific specialty because the petitioner has no evidence to establish this criterion. Finally, counsel compares the duties of the proffered position with those of a public relations specialist. Counsel submits five advertisements on motion.

Counsel's assertions and additional evidence do 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 additional evidence; however, the evidence does not constitute new facts. 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). On appeal, the AAO found that the petitioner's submitted advertisements were inadequate to establish the second criterion because the advertisers were dissimilar from the petitioning entity. Here, on motion, the advertisers are also dissimilar from the petitioning entity. Thus, the evidence contained in this motion is not "new" for the purpose of a motion to reopen.

Counsel's statement, that various organizations recognize that public relations specialist positions require a bachelor's degree, is not supported by affidavits or other documentary evidence that demonstrates that a bachelor's degree in a specific specialty is required for the proffered position.

Counsel states that the regulations do not require that the submitted advertisements represent organizations in the same industry as the petitioner. However, counsel does not support the assertion by any pertinent precedent decisions or regulations. Finally, counsel's assertion that the AAO abused its discretion by requiring that the petitioner establish that it has in the past employed a person holding a bachelor's degree in a specific specialty for the proffered position, is irrelevant in satisfying the requirements of a motion to reconsider. The AAO's finding was merely to address whether the evidence in the record established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): the petitioner normally requires a degree or its equivalent for the position.

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 December 16, 2002, is affirmed. The petition is denied.