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20 Mass. Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
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DA



FEB 06 2004

FILE: SRC 01 138 50921 Office: TEXAS SERVICE CENTER Date:

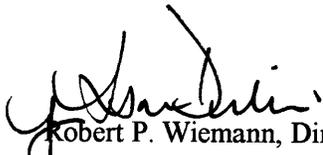
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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 Texas Service Center approved the nonimmigrant visa petition and certified his decision to the Associate Commissioner for Examinations for review. The Associate Commissioner for Examinations reversed the decision of the director and denied the petition. The matter is again before the Administrative Appeals Office (AAO) on a motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a recruiter, placement firm, and consultant for the health care field and it seeks to employ the beneficiary as a critical care specialist nurse. The director initially approved the petition on the basis that the proffered position met the definition of a specialty occupation, and certified his decision to the Associate Commissioner for Examinations for review. The Associate Commissioner for Examinations reversed the director's decision and denied the petition.

On motion, counsel states that the legal issue is whether the proffered position qualifies as a specialty occupation. The AAO, counsel states, reasoned that the job duties of the proffered position do not vary substantially from the job duties of a registered nurse as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). Because the *Handbook* states that a baccalaureate degree is not normally necessary for entry into the position of registered nurse, counsel states that the AAO reasoned that the position is not a specialty occupation as defined at Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), and the regulations found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel claims that the AAO's decision overlooked the applicable language in the regulations and statute which states a "bachelor's degree or its equivalent." Counsel asserts that the petitioner had presented with his petition and his appeal a large body of evidence demonstrating that the proffered position requires a person holding a bachelor's degree or equivalent work experience. Counsel asserts that the contrary evidence relied upon is the *Handbook*, and counsel alleges that the *Handbook* is flawed because it is silent about work experience equivalency, and is similarly silent about job duties in a critical care environment. Counsel declares that the petitioner has presented sufficient evidence to satisfy its burden of proof.

Counsel's statements are not persuasive. 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 no new evidence. Counsel asserts that the AAO overlooked the language a "bachelor's degree or its equivalent" and erroneously relied upon the *Handbook*. Moreover, counsel asserts that the record contains a large body of evidence demonstrating that the proffered position requires a person holding a bachelor's degree or equivalent work experience. Counsel's assertions, however, are without merit. 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, counsel submits no evidence on motion. Accordingly, the AAO is not swayed by counsel's claim that the record contains a large body of evidence demonstrating that the proffered position requires a person holding a bachelor's degree or equivalent work experience or that the AAO overlook language and erroneously relied upon the *Handbook*.

Counsel 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 based on the AAO's overlooking the language in the statute and regulations and erroneously relying upon the *Handbook*, counsel does not support this assertion by referring to any pertinent precedent decisions, or establishing that the AAO misinterpreted the evidence of record. As previously related, 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).

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 February 14, 2002, is affirmed. The petition is denied.