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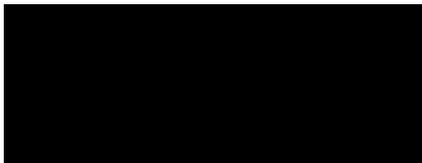
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

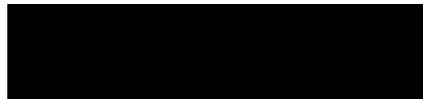


File: EAC-01-021-53968

Office: VERMONT SERVICE CENTER

Date: JAN 05 2004

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

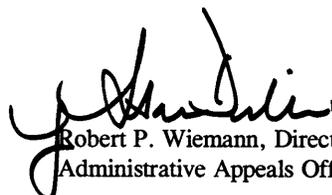
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 motion to reopen or reconsider. The motion will be dismissed.

The petitioner is historic preservation firm that employs 20 persons and has a gross annual income of \$650,000. It seeks to employ the beneficiary as a stone cutter/historic restoration mason. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

On motion, the petitioner states that the AAO inappropriately applied the law, and that the analysis used by the AAO to deny the petition was inconsistent with the submitted evidence. The petitioner states that the nature of the proposed position's duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner states that the previously submitted evidence and the present evidence, a letter from the Honorary Consul of France - Commonwealth of Virginia, confirm that there is no position in the United States that has equivalent qualifications to a *compagnon's* qualifications. The petitioner states that the AAO erroneously discounted the weight of Mr [REDACTED] statements because the AAO believes that he had an interest in the outcome of the proceedings.

The petitioner states that AAO's analysis on page four, concluding that the duties of the offered position appear to be primarily those of a stonemason, combined with those of a construction manager and an architectural drafter, is completely incorrect. The petitioner states that the United States did not repair the Statute of Liberty with welders or metal workers trained in the United States, but used *compagnons* to repair the Statue of Liberty. The petitioner alleges that it was unsuccessful in locating candidates in the United States to fill the proffered position. The petitioner submits letters from the mayor of the Town of Gordonsville, Virginia, and [REDACTED] [REDACTED] an author and journalist, to demonstrate public support of the project.

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 motion, the petitioner submits 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). Here, the documents submitted on motion reiterate the same assertions as the documents submitted on appeal, namely, that because the United States does not have any medieval structures, except for those shipped to the United States, our university system would not produce persons qualified to repair or reconstruct medieval structures, nor would the United States have a position equivalent to a *compagnon*. Thus, the evidence contained in this motion is not "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 the AAO's decision to deny the petition was an incorrect application of the law, the petitioner does not support the assertion by any pertinent precedent decisions, or establish that the AAO 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 decision of the AAO, dated August 23, 2002, is affirmed. The petition is denied.