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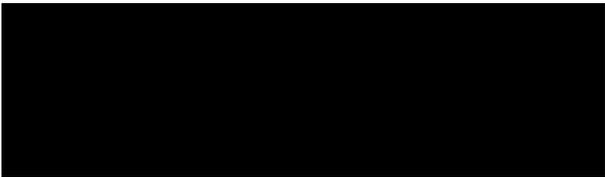
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FILE: EAC 01 217 51967 Office: NEBRASKA SERVICE CENTER Date: 11 12 2004

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:



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.

*Mari Pluron*

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The director's decision was then appealed to the Administrative Appeals Office (AAO). That appeal was dismissed by the AAO. The matter is now before the AAO on a motion to reopen pursuant to 8 C.F.R. § 103.5. The motion will be dismissed. The previous decision of the AAO will be affirmed.

The petitioner is an auto-body repair business, and seeks to employ the beneficiary as an application software engineer. It endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the ground that the proffered position did not qualify as a specialty occupation. The AAO thereafter dismissed the petitioner's appeal on the same ground.

The regulation at 8 C.F.R § 103.5 provides in pertinent part that "a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The motion to reopen does not state new facts to be proven in a reopened proceeding. It merely discusses the duties of the proffered position and states that the position qualifies as a specialty occupation. The motion to reopen shall accordingly be dismissed since it does not meet the requirements of a motion to reopen.

**ORDER:** The motion is dismissed. The previous decision of the AAO dated October 1, 2002 is affirmed.