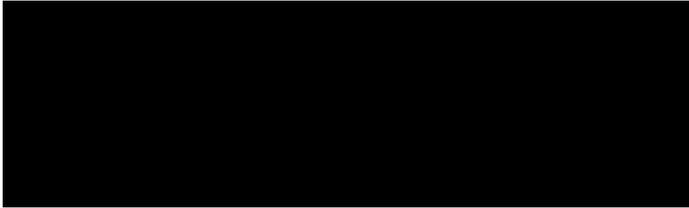


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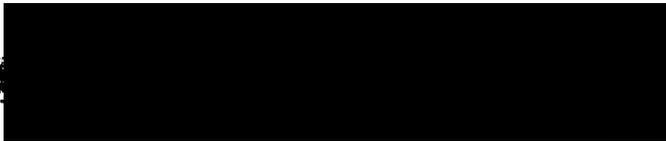


D2

FILE: EAC 01 276 53970 Office: VERMONT SERVICE CENTER

Date: JUN 02 2004

IN RE: Petitioner:
Beneficial:



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 Johnson

or Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont 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 reconsider pursuant to 8 C.F.R. § 103.5. The motion shall be dismissed. The previous decision of the AAO will be affirmed.

The petitioner is a restaurant, pastry, and catering business. It seeks to employ the beneficiary as a restaurant manager and endeavors to classify her 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 offered position did not qualify as a specialty occupation. The AAO thereafter dismissed the petitioner's appeal on the same ground.

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). Counsel's motion does not state new facts to be proved in a reopened proceeding, nor is it supported by affidavits or other documentary evidence. It simply makes reference to portions of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* previously considered and referred to in the AAO's prior decision. As such, the motion does not meet applicable requirements and shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been sustained.

ORDER: The motion is dismissed. The previous decision of the AAO dated March 19, 2003, is affirmed.