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FILE: EAC 02 002 53779 Office: VERMONT SERVICE CENTER

Date: JUN 2 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:

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 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 again before the AAO on a motion to reconsider pursuant to 8 C.F.R. § 103.5. The motion shall be dismissed.

The petitioner provides surgical services to the general public. It seeks to employ the beneficiary as a practice manager. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

On motion to reconsider, counsel states that the proffered position is a specialty occupation and meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asks that the AAO review evidence previously submitted in support of the I-129 petition.

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' 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).

Counsel does state the reasons for her motion to reconsider, and again discusses evidence previously filed of record. Her motion is, however, not supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or CIS policy. Nor does the motion establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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 5, 2003, is affirmed. The petition is denied.