



U.S. Citizenship
and Immigration
Services

D2

[Redacted]

FILE: LIN 02 007 53363 Office: NEBRASKA SERVICE CENTER Date:

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

LIN 02 007 53363

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.

Mari Johnson

6 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 and reconsider 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 a software consulting business, and seeks to employ the beneficiary as a software consultant. 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 petitioner's labor condition application was filed subsequent to the filing of the I-129 petition. 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).

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 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).

The motion to reopen is supported by an affidavit, but does not state new facts to be proven in a reopened proceeding. The motion to reopen shall accordingly be dismissed.

The motion to reconsider states the reasons for reconsideration, but is not supported by pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy. Furthermore, the motion does not establish that the prior decision was incorrect based on the evidence of record at the time of the initial decision. The motion to reconsider shall accordingly be dismissed.

ORDER: The motion is dismissed. The previous decision of the AAO dated December 13, 2002 is affirmed.