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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services



FILE: EAC 01 078 52579 Office: VERMONT SERVICE CENTER Date: MAY 17 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:
[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.

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 non-profit community hospital and seeks to employ the beneficiary as a respiratory therapist. 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 offered position did not qualify as a specialty occupation.

The regulation at 8 C.F.R. § 103.5 provides in pertinent part:

[A]ny motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider.

If the adverse decision was served by mail, an additional three-day period is added to the proscribed period. 8 C.F.R. § 103.5a(b). Counsel seeks to reconsider the decision of the AAO that was issued on December 18, 2002. The motion to reconsider was filed on January 21, 2003, and would have been timely if received by Citizenship and Immigration Services (CIS) on or before January 20, 2003. The motion is, therefore, not timely. The motion must accordingly be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed. The previous decision of the AAO dated December 18, 2002 is affirmed.