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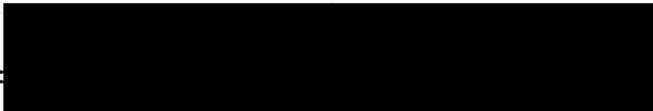


U.S. Citizenship
and Immigration
Services



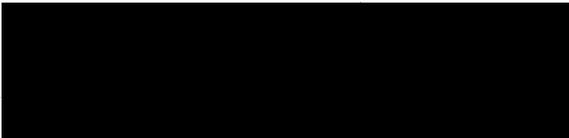
FILE: WAC 01 186 57165 Office: CALIFORNIA SERVICE CENTER Date: MAY 17 2004

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.

Mari Johnson

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California 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 meat distributor and seeks to employ the beneficiary as an accountant. 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 AAO thereafter dismissed the petitioner's appeal because the appeal was not filed by the petitioner or any authorized representative of the petitioner, but by counsel for the beneficiary who is not a recognized party to the proceeding. 8 C.F.R. § 103.2(a)(3).

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 petitioner seeks reconsideration and submits a Form G-28 (Notice of Entry of Appearance as Attorney of Representative) properly executed by the petitioner on January 14, 2003. The G-28 previously filed with the Notice of Appeal on January 29, 2002, was signed by the beneficiary on January 16, 2002, not by the petitioner, and as the result thereof, the appeal was properly rejected. The motion to reconsider must be dismissed as the motion does not establish by applicable precedent that the prior decision was based on an incorrect application of law or CIS policy. Nor does it establish that the prior 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 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 and the petitioner's motion to reconsider will be dismissed.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed.