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U.S. Citizenship  
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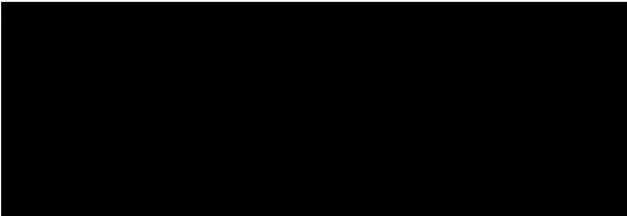
FILE: SRC 01 212 50473 Office: TEXAS SERVICE CENTER Date:

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 Director of the Texas Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a preschool that seeks to employ the beneficiary as a preschool teacher. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

On motion, counsel states that the AAO's analysis in the decision was inconsistent with the evidence, and that the AAO had inappropriately applied the law. Counsel contends that the AAO did not consider the response to the request for evidence in which the petitioner established additional job duties involving religion. According to counsel, the AAO erroneously concluded that the evidentiary record did not support the petitioner's claim that all of its teachers hold at least a baccalaureate degree. Counsel states that the submitted list of 14 preschool teachers employed by the petitioning entity showed that each teacher possesses at least a baccalaureate degree in education, elementary education, child development, or psychology along with minors in biblical studies, Hebrew, Japanese, Spanish, and music. The *Teacher's Handbook*, counsel contends, stated that each candidate for a teaching position must possess at least a bachelor's degree or an equivalent professional background in education. Referring to the submitted copy of the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*, counsel claims that a preschool teacher has an SVP rating of 7, which means the position requires a bachelor's degree. Counsel stated that the U.S. Department of Labor Employment and Training Administration states that most preschool teachers require a bachelor's degree, and counsel submits evidence of this.

Counsel fails to satisfy the requirements of a motion to reopen. 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. *See* 8 C.F.R. § 103.5(a)(2). Generally, the new facts must have been previously unavailable and could not have been discovered earlier in the proceedings. *See* 8 C.F.R. § 1003.2(c)(1). Here, the list of teachers and the *Teacher's Handbook* were previously submitted by the petitioner and considered by the AAO. Although the *DOT* and U.S. Department of Labor Employment and Training Administration evidence never had been submitted by the petitioner, this evidence had been previously available and could have been discovered earlier in the proceedings. Accordingly, none of this evidence is "new" for the purpose of a motion to reopen.

Counsel's contentions and the evidence fail to satisfy the requirements of a motion to reconsider. Counsel states that the AAO's decision to deny the petition was an incorrect application of the law. Counsel furthermore states that it was incorrect based on the evidence of record at the time of the initial decision because the AAO did not consider: (1) the petitioner's response to the request for evidence in which it described additional job duties which involved religion; (2) the list of 14 preschool teachers employed by the petitioning entity which showed that each teacher possessed at least a baccalaureate degree in a specific area; and (3) the *Teacher's Handbook* which indicated that a teaching position required at least a bachelor's degree or an equivalent professional background in education.

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 (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). Counsel states the reasons for reconsideration, but his reasons are not supported by any pertinent precedent decisions or relevant CIS policy that would establish that the decision was based on an incorrect application of law or CIS policy. Thus, counsel fails to satisfy the requirements of a motion to reconsider.

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 October 1, 2003, is affirmed. The petition is denied.