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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

DZ

[Redacted]

FILE: SRC 01 157 51910 Office: TEXAS SERVICE CENTER Date: **SEP 01 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.

Maui Johnson

for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was initially approved by the Director, Texas Service Center, who then certified the matter to the Administrative Appeals Office (AAO) for review pursuant to 8 C.F.R. § 103.4(a). By decision dated March 26, 2003, the AAO reversed the decision of the director and denied the I-129 petition. The matter is now before the AAO on a motion to reopen 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 skilled care facility, and seeks to employ the beneficiary as a charge nurse. 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 AAO denied the petition on the ground that the proffered position is not a specialty occupation.

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. 8 C.F.R. § 1003.23(b)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The motion to reopen is supported by documentary evidence, but does not state new facts to be provided in the reopened proceeding. The motion to reopen shall accordingly be dismissed.

ORDER: The motion is dismissed. The previous decision of the AAO dated March 26, 2003 is affirmed.