

identifying data deleted to
prevent clear, unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

FILE: LIN 02 263 53635 Office: NEBRASKA SERVICE CENTER Date: **AUG 09 2005**

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 service center director 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 distributor of industrial products that seeks to employ the beneficiary as an assistant import and export manager. The petitioner 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 basis that the proffered position did not meet the definition of a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel states that the proffered position qualifies as a specialty occupation and a baccalaureate degree or its equivalent is normally the minimum requirement for entry into this position. Counsel submits the following supporting documentation: Internet job postings; three approval notices for related positions, dated May 14, 1996, March 6, 1998, and December 1, 2000, respectively; and a copy of the Missouri prevailing wage letter that was submitted previously in response to the director's request for evidence.

Counsel's submission of additional evidence does not satisfy either the requirements of a motion to reopen or a motion to reconsider. 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. 8 C.F.R. § 103.5(a)(2). 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).

On motion, counsel submits evidence previously submitted and other evidence, such as Internet job postings and previous CIS approvals, which could have been submitted previously. As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. *See* 8 C.F.R. § 1003.23(b)(3). Here, no evidence in the motion contains new facts that were previously unavailable. One of the documents submitted on motion is the same document that the petitioner submitted in response to the director's request for evidence, and the remaining evidence was not previously unavailable. Moreover, counsel had the opportunity to submit Internet job postings and copies of the previous approvals, mentioned above, in the response to the director's request for evidence and during the appeal proceeding. Accordingly, this evidence is not "new" for the purpose of a motion to reopen.

The evidence also fails to satisfy the requirements of a motion to reconsider. Although counsel asserts that CIS should have approved the instant petition, he does not support his assertion by any pertinent precedent decisions, or establish that the director misinterpreted the evidence of record.

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 April 14, 2004, is affirmed. The petition is denied.