



U.S. Citizenship  
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FILE: SRC 02 045 50041 Office: TEXAS SERVICE CENTER Date: **DEC 14 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. The motion will be dismissed.

The petitioner provides security systems services, and seeks to employ the beneficiary as a design engineer. It endeavors to classify him 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 proffered position is not a specialty occupation. The AAO affirmed the director's findings.

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

The motion to reopen is not supported by new facts that were unavailable that could not reasonably have been discovered or presented in previous proceedings. The "new facts" submitted by the petitioner consist of Internet job advertisements for engineering positions in organizations that are not similar to that of the petitioner, and are for positions not similar to that being offered to the beneficiary. The advertisements are for engineers in design/manufacturing industries. Internet advertisements for positions similar to those presented in the job advertisements submitted on appeal, were present in the labor market when the appeal was initially filed and prior to the AAO's determination. As such, the petitioner has not presented "new facts" to be provided in a reopened proceeding. Further, the petitioner's motion to reopen is not supported by affidavits or other documentary evidence as required by regulation.

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).

While not styled a motion to reconsider, the motion does not establish that the prior decision was based on an incorrect application of law or CIS policy, nor does it establish that the decision was incorrect based on the evidence of record at the time of the initial decision. The record reflects, and the prior decision correctly states, that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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 29, 2003, is affirmed. The petition is denied.