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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 02 035 50495 Office: TEXAS SERVICE CENTER Date: FEB 07 2005

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:

SELF-REPRESENTED

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 healthcare services business that seeks to employ the beneficiary as a staff nurse. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

On motion, counsel refers to submitted evidence, an H-1B petition, approval notice, and various documents from Siegel Chiropractic Centers, and states that it demonstrates that Citizenship and Immigration Services (CIS) has already determined that the proffered position is a specialty occupation given that CIS had approved another, similar petition in the past.

Counsel's evidence 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). The evidence submitted on motion, the Form I-129 petition, approval notice, and various documents from Siegel Chiropractic Centers, was previously available to the petitioner and could have been discovered earlier in the proceedings. Accordingly, because none of this evidence is "new" for the purpose of a motion to reopen, it fails to satisfy the requirements of a motion to reopen.

To satisfy the requirements of a motion to reconsider, counsel asserts that the evidence on motion, a precedent decision, proves that the proffered position qualifies as a specialty occupation. 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 evidence on motion, the Form I-129 petition, approval notice, and various documents from Siegel Chiropractic Centers, has no precedential value. The regulation at 8 C.F.R. § 103.8(d) provides that each nonimmigrant petition is a separate proceeding with a separate record. In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Consequently, the submitted evidence is not a precedent decision that would establish that the decision was based on an incorrect application of law or CIS policy. Counsel, therefore, 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 June 12, 2003, is affirmed. The petition is denied.

ORDER: The appeal is dismissed. The petition is denied.