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U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 02 132 51487 Office: NEBRASKA 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 Nebraska 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 law firm that seeks to employ the beneficiary as a legal assistant. 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 was inconsistent with the evidence, that the AAO had inappropriately applied the law, and that the AAO should consider new evidence on motion. Counsel refers to a 1999 National Federation of Paralegal Associations (NFPA) report to state that a four-year degree is the minimum hiring requirement in many markets. Counsel attests that the *Handbook's* statement, that there are many avenues to entry into a paralegal position, is irrelevant and that the *Handbook* actually supports the petitioner's claim that employers prefer graduates of 4-year paralegal programs or college graduates who have completed paralegal certificate programs. Counsel submits an affidavit to support this claim. Counsel contends that although a paralegal may come from various educational backgrounds, law firms generally require additional education or experience in the legal field as a minimum hiring requirement. Counsel avers that many states, including Illinois and South Dakota, acknowledge the complexity of a paralegal's tasks. Counsel refers to previously submitted resumes to substantiate the petitioner's claim that it normally requires a bachelor's degree for entry into the proffered position. Finally, counsel recites the beneficiary's duties to demonstrate their specialized and complex nature.

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 affidavit submitted on motion was previously available to the petitioner, and could have been discovered earlier in the proceedings. Accordingly, since this evidence is not "new" for the purpose of a motion to reopen, it fails to satisfy the requirements 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 analysis was inconsistent with the evidence, and that the AAO had inappropriately applied the law. 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). Here, counsel states the reasons for reconsideration. But his reasons are not supported by any pertinent precedent decisions that would establish that the AAO decision was based on an incorrect application of law or CIS policy. Accordingly, 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.

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**ORDER:** The motion is dismissed. The previous decision of the AAO, dated October 28, 2003, is affirmed. The petition is denied.