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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUL 01 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The petitioner filed an appeal, which was denied by the Administrative Appeals Office (AAO). The petitioner filed a motion to reconsider, which was treated by the AAO as a motion to reopen or reconsider and dismissed for failure to satisfy the requirements of either type of motion under 8 C.F.R. § 103.5(a)(2) or (3). The matter is now before the AAO on a motion to reopen. The motion will be dismissed. The petition will be denied.

The petitioner is a producer of machine parts. It seeks to employ the beneficiary as an assistant import/export manager and 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the ground that the record failed to establish that the proffered position qualifies as a specialty occupation. The AAO denied the appeal on the same ground.

Motions to reopen or reconsider are governed by regulations at 8 C.F.R. § 103.5. As provided in 8 C.F.R. § 103.5(a)(1), "when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision."

The requirements of a motion to reopen are specified in 8 C.F.R. § 103.5(a)(2):

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.

The AAO requires that new facts be material, previously unavailable, and not discoverable or presentable earlier in the proceeding. *Cf.* 8 C.F.R. § 1003.2(c)(1). The petitioner's motion to reopen is supported by additional documentation. The motion does not state any new facts that were unavailable earlier in the proceeding, however, and the additional documentation likewise does not reveal any new fact that could not have been discovered or presented earlier in this proceeding. Motions to reopen immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. [REDACTED]*, 502 U.S. 314, 323 (1992)(citing *INS v. [REDACTED]*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. [REDACTED]*, 485 U.S. at 110. With the current motion, the movant has not met that burden. Thus, the petitioner's submission does not satisfy the requirements of a motion to reopen and does not show proper cause for reopening by the AAO under 8 C.F.R. § 103.5(a)(1).

The AAO also finds that counsel's assertions do not satisfy the requirements for granting a motion to reconsider. 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 policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *See* 8 C.F.R. § 103.5(a)(3).

As provided in 8 C.F.R. § 103.5(a)(4): "A motion that does not meet the applicable requirements shall be dismissed." Accordingly, the petitioner's motion to reopen must be dismissed.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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