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U.S. Citizenship
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JUN 01 2011

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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:

[Redacted]

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.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The AAO rejected the appeal. Counsel now submits a motion to reopen and Form G-28. The motion will be dismissed.

The petitioner is a residential care facility that seeks to employ the beneficiary as an assistant administrator. 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 petitioner had not established that the beneficiary was qualified to perform a specialty occupation.

The petitioner's previous appeal had been rejected by the AAO in a decision dated July 30, 2004, because the beneficiary, not an authorized representative of the petitioner, signed the Form G-28, Entry of Appearance as Attorney or Representative that is in the record. Counsel now submits a Form G-28 signed by the petitioner with a motion to reopen.

Counsel's submission of additional evidence does not 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. 8 C.F.R. § 103.5(a)(2).

On motion, counsel submits a new Form G-28. This is not considered to be a "new fact" as required by the law. 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. § 1003.2(c)(1). Here, no evidence in the motion contains new facts that were previously unavailable. The document submitted on motion could have been submitted at an earlier date.

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 July 30, 2004, is affirmed. The petition is denied.