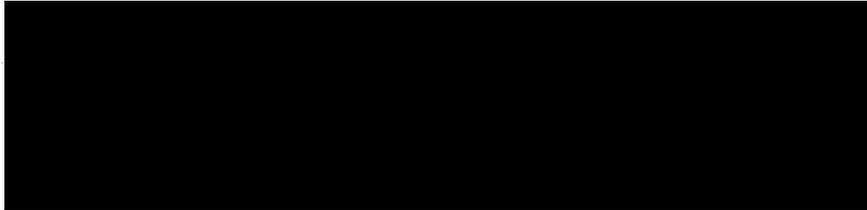




U.S. Citizenship
and Immigration
Services

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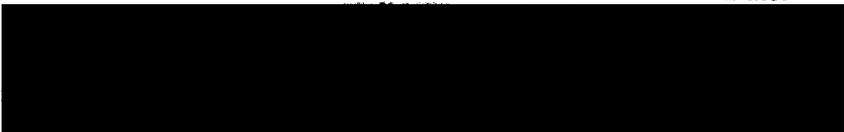
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FILE: LIN 03 027 50854 Office: NEBRASKA SERVICE CENTER Date: NOV 01 2005

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

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 matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The petition will be denied.

The petitioner is a state government agency. It seeks to employ the beneficiary as an information technology applications specialist and to extend his classification 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 petitioner failed to establish that the proffered position is 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 requirements of a motion to reconsider are specified in 8 C.F.R. § 103.5(a)(3):

A motion to reconsider must 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 Service [U.S. Citizenship and Immigration Services] policy. A motion to reconsider . . . must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In support of the motion counsel submitted a letter, dated October 27, 2004, stating the following:

We believe the evidence of record at the time of the denial established qualification for the H-1 visa at issue in this case. Our review of your denial, however, makes clear that certain details need to be clarified. We further understand from your denial letter that the only remaining issue surrounds the petitioner's requirements for the position.

Counsel stated in its letter that a brief would be submitted within 30 days. No such brief was submitted in that time period, or any time thereafter. In a second letter, dated August 9, 2005, counsel stated that it was still working on a brief and supporting evidence, and requested an extension until September 1, 2005 to submit such materials. No further submission has been received from counsel.

As the regulations make clear, the legal basis of a motion to reopen or reconsider together with supporting documentation must be filed with the motion, not at some later time. In neither of her letters, however, did counsel state any new facts, supported by affidavits or documentary evidence, as required in a motion to reopen. Nor did counsel state any reasons for reconsideration, supported by precedent decisions, to establish that the decision was based on an incorrect application of law or policy, as required in a motion to reconsider. Thus, counsel's submissions do not satisfy the requirements of either a motion to reopen or a motion to reconsider, and do not show proper cause for favorable action by the AAO.

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 instant motion 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 met that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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