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**U.S. Citizenship  
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Services**

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FILE: EAC 02 082 54296 Office: VERMONT SERVICE CENTER Date: NOV 02 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, 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 then filed a motion to reopen or reconsider. The AAO granted the motion, but affirmed its previous decision denying the petition. The matter is now before the AAO on another motion to reopen or reconsider. The motion will be dismissed. The petition will be denied.

The petitioner is a coin and jewelry shop. It seeks to employ the beneficiary as a special projects and public relations officer and to classify her 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 petition was denied by the director, as well as by the AAO, on the ground that the proffered position is not a specialty occupation.

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 [Citizenship and Immigration Services] policy.

In support of the instant motion counsel has submitted a letter from the petitioner which reiterates previous arguments that the proffered position is a specialty occupation, because the specialized nature of its duties requires a baccalaureate degree, and refers to previously submitted documentation which was already considered by the service center and the AAO in their previous decisions. Also submitted with the motion is a VHS tape of a Fox News broadcast, which features the petitioner and is offered as evidence of its expanding business. Neither counsel nor the petitioner explains the relevance of the Fox News broadcast to the instant motion, however, or cites any particular excerpt or information from the broadcast as evidence that the proffered position is a specialty occupation. Counsel also refers to some company brochures, but they were not submitted with the motion.

The instant motion does not state any new facts, supported by affidavits or other documentary evidence, as required in a motion to reopen. Nor does the motion state any reasons for reconsideration, supported by precedent decisions, to establish that the AAO’s prior decision was based on an incorrect application of law or policy, as required in a motion to reconsider. Thus, the petitioner’s submission does not satisfy the requirements of either a motion to reopen or a motion to reconsider and does 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 petitioner’s motion to reopen or reconsider 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.

**ORDER:** The motion to reopen or reconsider is dismissed. The petition is denied.