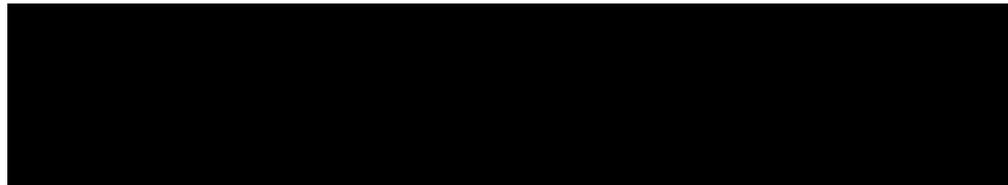




U.S. Citizenship
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Services

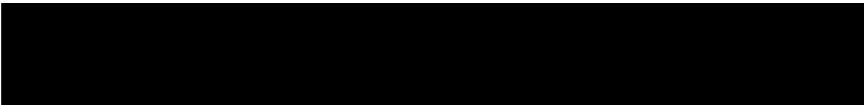
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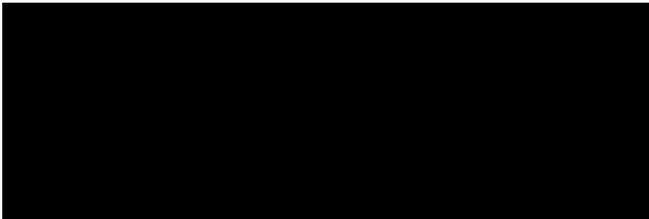
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FILE: EAC 01 067 53682 Office: VERMONT SERVICE CENTER Date: **OCT 17 2005**

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 documents 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 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 an advocacy and mediation service, and seeks to employ the beneficiary as a case manager (social service). It endeavors 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the ground that the beneficiary was not qualified to perform the duties of a specialty occupation. The AAO affirmed the director's findings.

The regulation at 8 C.F.R. § 103.5 provides in pertinent part that "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." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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 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).

The motion to reopen is supported by documentary evidence, but does not state new facts to be proven in a reopened proceeding. Counsel sets forth training that the petitioner has completed which relates to the position of a social worker. All of the training referenced, however, was completed subsequent to the filing of the Form I-129 petition and may not be considered in determining whether the beneficiary is qualified to perform the duties of the proffered position as the petitioner must establish that the beneficiary is qualified to perform the duties of a specialty occupation at the time the petition is filed. The submitted documentation does not, therefore, constitute new facts to be proved in a reopened proceeding.

The motion to reconsider does not establish that the prior decision was based on an incorrect application of law or CIS policy, nor does it establish that the decision was incorrect based on the evidence of record at the time of the initial decision. The record reflects, and the prior decision correctly states, that the petitioner failed to establish that the beneficiary qualified to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C).

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 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 April 30, 2002 is affirmed. The petition is denied.