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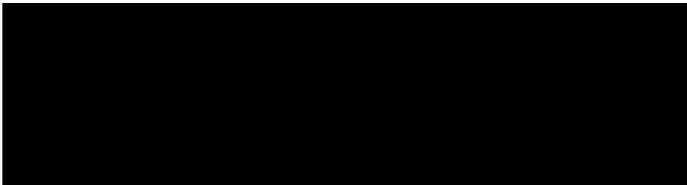
Date: **OCT 25 2005**

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, Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and a motion to reconsider. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a retail financial services/check cashing business that seeks to employ the beneficiary as an assistant manager. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation. The AAO dismissed the petitioner's appeal of the decision, affirming the director's decision. Counsel filed a motion; the motion indicated that additional evidence in support of the motion would be submitted by September 1, 2002. According to the AAO, under the regulation at 8 C.F.R. § 103.3(a)(2)(vii), a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, but this provision does not apply to a motion to reopen or reconsider: the additional evidence must comprise the motion. 8 C.F.R. §§ 103.5(a)(2) and (3). Thus, the AAO dismissed the motion, finding that it had not been properly filed since the petitioner had not submitted any new facts or additional evidence in support of the motion.

With the motion under consideration here, counsel indicates in an October 29, 2003 letter that additional evidence in support of the motion will be submitted by December 13, 2003. The AAO finds that the motion does not meet regulatory requirements. The petitioner states that additional evidence will be submitted in 45 days.¹ However, the regulation at 8 C.F.R. §-103.3(a)(2)(vii) provides that a petitioner may request additional time to submit a brief and/or additional evidence to the AAO in connection with an appeal, but this provision does not apply to a motion to reopen or reconsider as the additional evidence must comprise the motion. 8 C.F.R. §§ 103.5(a)(2) and (3). The motion therefore fails to meet applicable requirements and to provide new facts or additional evidence.

ORDER: The motion is dismissed.

¹The AAO notes that no additional evidence has been received by the AAO.