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FILE: WAC 04 043 50381 Office: CALIFORNIA SERVICE CENTER Date: APR 10 2006

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.

*for Michael T. Kelly*  
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 issued a summary dismissal based on the petitioner's failure to specify any erroneous conclusion of law or statement of fact for the appeal. The petitioner filed a motion to reopen. The motion will be denied.

The petitioner is a real estate services company that seeks to employ the beneficiary as a financial analyst. 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 because the proffered position is not a specialty occupation.

On motion to reopen, counsel submits a brief.

Counsel's assertions do not satisfy the requirements of either a motion to reopen or a motion to reconsider.

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 brief and supporting documents addressing the director's decision, but does not address the AAO's decision dismissing the appeal based on the petitioner's failure to specify any erroneous conclusion of law or statement of fact for the appeal. This cannot be considered to be a "new fact" related to the previous decision, 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 documents submitted on motion could have been submitted within 30 days of filing the appeal, as counsel indicated would occur.

The matters filed as a motion also fail to satisfy the requirements of a motion to reconsider. 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 Citizenship and Immigration Services 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 AAO decision that this motion addressed was in compliance with the regulatory direction at 8 C.F.R. § 103.3(a)(1)(v), cited in that decision, to summarily dismiss any appeal when the party concerned fails to identify specifically any conclusion of law or statement of fact for the appeal. The motion provides no evidence that, in its appeal to the AAO, the petitioner had identified specifically any conclusion of law or statement of fact for the appeal. Therefore, there is no basis for granting a motion to reconsider.

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 August 16, 2004, is affirmed. The petition is denied.