



U.S. Citizenship
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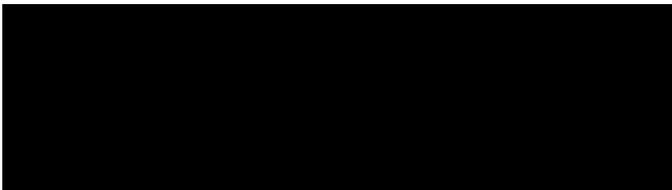
MAR 09 2007

FILE: WAC 04 061 51219 Office: CALIFORNIA SERVICE CENTER Date:

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the Administrative Appeal Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen its previous decision. The motion to reopen will be dismissed.

The petitioner is a residential care facility. It desires to employ the beneficiary temporarily in the United States as an accountant, at a salary of \$15.73 per hour, for three years. 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 determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation and denied the petition.

On appeal, the AAO affirmed the director's decision. The AAO determined that the petitioner had not established that the proposed position qualifies for classification as a specialty occupation.

On motion, counsel states that the AAO erred in deciding that the beneficiary's duties and responsibilities do not involve a highly specialized knowledge of accounting but can simply be performed by an accounting clerk or bookkeeper.

The motion to reopen consists solely of the motion to reopen dated January 6, 2006, counsel's Notice of Entry of Appearance (Form G-28) and a copy of the AAO's decision dismissing the appeal.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 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 policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel's request to reopen the proceeding, filed on January 6, 2006, was not accompanied by any evidence or arguments based on precedent decisions. Counsel's brief is dated March 20, 2006 and was received by the AAO on March 30, 2006. A request for motion must meet the regulatory requirements of a motion to reopen or reconsider *at the time it is filed*; no provision exists for Citizenship and Immigration Services (CIS) to grant an extension in order to await future correspondence that may or may not include evidence or arguments. Thus, the brief filed on March 30, 2006 may not be considered. The motion was not filed with new evidence; it was not supported by precedent decisions to establish that the decision was based on an incorrect application of law or policy.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden. Accordingly, the previous decisions of the director and the AAO will be affirmed.

ORDER: The motion is dismissed. The previous decision of the AAO, dated December 9, 2005, is affirmed. The petition is denied.