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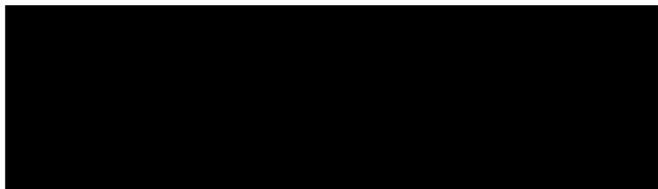
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FILE: EAC 04 260 52909 Office: VERMONT SERVICE CENTER Date: **SEP 10 2007**

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be denied. The previous decision will be affirmed and the petition will be denied.

The petitioner operates retail gasoline stations/stores. It seeks to employ the beneficiary as a quality control engineer 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 determining that the petitioner failed to establish that the proffered position was a specialty occupation. On August 25, 2006, the AAO affirmed the director's decision.

On September 22, 2006, the AAO received a motion to reopen or to reconsider its prior decision. Counsel for the petitioner asserted that the Service had misclassified the position and that the Department of Labor's *O*NET* indicated that an occupational health and safety specialist had a JobZone classification of 5, which required extensive preparation and a bachelor's degree as the minimum formal education. Counsel reiterated his assertions on appeal that a degree requirement is consistent with the petitioning company's hiring practices; that the duties and responsibilities of a quality control engineer are so complex or unique that the position requires the services of a professional; that it is inappropriate to focus on the petitioning company's size; and that the petitioner must maintain qualified employees.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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 regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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.

In this matter, counsel's assertions on appeal fail to meet the requirements of a motion to reopen or a motion to reconsider. A motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Counsel's assertions do not include any new facts but provide the same argument initially submitted on appeal and already addressed by the AAO. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The AAO notes counsel's reference to *O*NET* and the JobZone classification of 5 for an occupational health and safety specialist on motion. However, the AAO does not consider the *O*NET* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *O*NET* provides only general information regarding the tasks and

work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The JobZone classification does not detail how the preparation for a position is divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. The AAO also notes counsel's assertion that the size of the petitioner should not be the focus when determining whether a position is a specialty occupation. However, in this matter, it was the description of the proffered position's duties that was the most critical factor when determining that the evidence submitted did not substantiate that the position actually required the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, not the petitioner's size or the petitioner's self-imposed standards.

Counsel has not submitted new facts supported by affidavits or other documentary evidence nor has counsel submitted any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy based on the evidence of record at the time of the initial decision. Counsel fails to establish that the decision was a result of an incorrect application of the law or establish that the director or the AAO misinterpreted the evidence of record.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decision of the AAO will be affirmed.

ORDER: The decision of the AAO is affirmed. The petition is denied.