

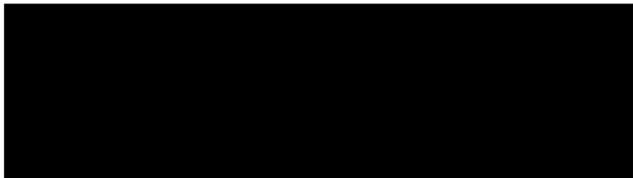


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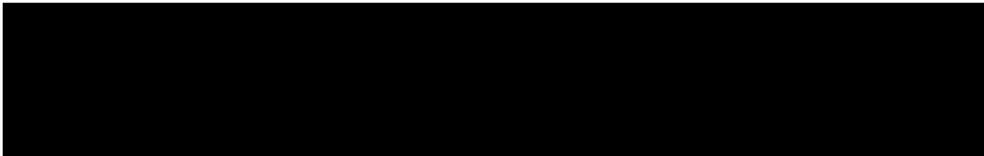
FILE: WAC 03 066 52599 Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 2008**

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 service center director denied the nonimmigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was filed by counsel on behalf of the beneficiary since the G-28, Notice of Entry of Appearance as Attorney or Representative (Form G-28) submitted in conjunction with the Form I-290B, indicates that the beneficiary retained counsel to file the appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). As the appeal was not properly filed, it was rejected by the AAO without rendering a decision pursuant to 8 C.F.R. § 103.3(a)(2)(v)(a)(1). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner is a general merchandise wholesaler that seeks to employ the beneficiary as a storage and distribution manager. 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 on June 30, 2004. On July 27, 2004, the petitioner filed an appeal seeking review of the director's decision. As noted above, after reviewing the record, the AAO rejected the appeal as improperly filed pursuant to 8 C.F.R. § 103.3(a)(2)(v)(a)(1).

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. As noted above, the AAO rejected the appeal because it was filed by the beneficiary, who obtained counsel to represent him. The beneficiary is not a party to the proceeding. The petitioner's motion does not meet the above cited regulatory requirements in that the motion to reopen is not supported by new facts that were unavailable that could not reasonably have been discovered or presented in previous proceedings. 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 January 27, 2006 is affirmed. The petition is denied.