

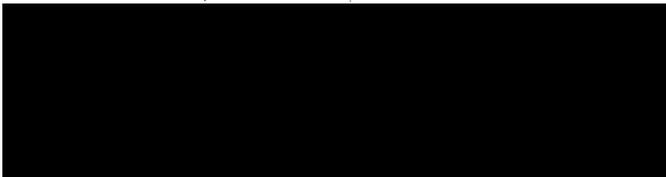
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 02 265 53684 Office: VERMONT SERVICE CENTER Date: JUL 25 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

In order to employ two unnamed beneficiaries as salvage laborers for a period of ten months, the petitioner, a salvage yard, endeavors to classify them as temporary nonagricultural workers pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b).

The Department of Labor (DOL) determined that temporary labor certification could not be made, and the director determined that the petitioner had not established that a temporary need for the positions exists. The AAO dismissed a subsequent appeal.

On motion, the petitioner submits a letter requesting that the AAO reopen the case and “take a closer look.”

Counsel’s assertions on motion satisfy neither the requirements of a motion to reopen nor a motion to reconsider.

The requirements of a motion to reopen are set forth at 8 C.F.R. § 103.5(a)(2):

Requirements for motion to reopen. 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 petitioner’s submission does not meet this evidentiary category. Other than the names of the beneficiaries, the facts presented by the petitioner on motion are already contained in the record.¹ No new facts are presented to support the motion, nor is any additional evidence submitted.

Therefore, the petitioner’s submission does not meet the requirements of a motion to reopen.

The requirements of a motion to reconsider are set forth at 8 C.F.R. § 103.5(a)(3):

Requirements for motion to reconsider. 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.

The petitioner’s submission does not meet this evidentiary category, as it is not supported by any pertinent precedent decisions or other evidence to establish that the decision was based on an incorrect application of law or CIS policy.

Therefore, the petitioner’s submission does not meet the requirements of a motion to reconsider.

¹ While the AAO does acknowledge that the names of the beneficiaries were not contained in the record of proceeding at the time the appeal was adjudicated, the AAO’s dismissal of the appeal was not based upon the failure to provide the names of the beneficiaries, and their names are immaterial to the issue of the petitioner’s eligibility for the benefit sought.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet the applicable requirements shall be dismissed. The instant motion satisfies the requirements of neither a motion to reopen nor a motion to reconsider and will therefore be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed. The AAO's April 10, 2003 decision is affirmed. The petition is denied.