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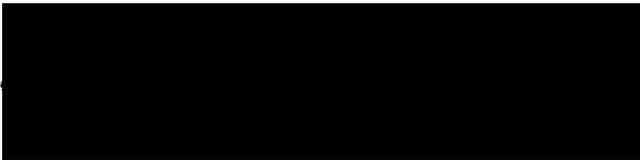
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FILE: WAC 03 081 54242 Office: CALIFORNIA SERVICE CENTER Date: SEP 16 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

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, 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 dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a trainee. The director found that the petitioner did not establish that the training is unavailable in the beneficiary's home country. The AAO determined that the petitioner did not provide requested information in response to the director's request for evidence, but submitted it on appeal. As a result, that evidence was not considered and the appeal was decided based on the information before the director. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Counsel's submission does not satisfy either the requirements of a motion to reopen or a motion to reconsider. 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. 8 C.F.R. § 103.5(a)(2). 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 (CIS) 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).

On motion, counsel submits a statement that essentially repeats the information submitted on appeal. Counsel's statement is not persuasive. As previously stated, a motion to reopen must state the new facts that will be provided if the matter is reopened, and must be supported by affidavits or other documentary evidence. 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. Counsel submits additional documentary evidence, but does not establish that the evidence was previously unavailable.

The evidence also fails to satisfy the requirements of a motion to reconsider. Counsel does not supply any pertinent precedent decisions, or establish that the AAO misinterpreted the evidence of record in its decision.

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.

The AAO notes that earlier in the proceedings, the petitioner stated that the beneficiary was in valid legal status at the time the petition was filed on January 14, 2003, based on her employment authorization document for optional practical training that expired on March 23, 2003. There is evidence in the file that the beneficiary left her job on September 6, 2002. While this issue is not presently before the AAO, we note that an F-1 student authorized to engage in practical training is required to report any interruption of such employment to the designated school official for the duration of the authorized training. 8 C.F.R. § 214.2(f)(12).

**ORDER:** The motion is dismissed. The previous decision of the AAO, dated December 29, 2003, is affirmed. The petition is denied.