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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 00 265 53895 Office: VERMONT SERVICE CENTER Date: APR 19 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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 AAO granted a motion to reopen and reconsider, and subsequently affirmed the previous decision of the Associate Commissioner. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a textiles business that seeks to employ the beneficiary as a market research analyst. The petitioner, therefore, 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 the basis that the beneficiary is not qualified to perform the duties of a specialty occupation.

On motion, counsel states that the AAO based its denial of the petition on the ground that the beneficiary lacks the proper academic education for a market research analyst position. Counsel states that, although the AAO found the beneficiary's degree in business administration insufficient for the proffered position, the beneficiary had worked in the textiles industry for 15 years. Thus, counsel asserts that the beneficiary's combined academic education and work experience are the equivalent of a master's degree in business administration, and further asserts that within 30 days the beneficiary will submit a revised credentials evaluation to substantiate this assertion. The record, nonetheless, does not contain the revised credentials evaluation.

Counsel's statements do 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 proved 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 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).

The AAO finds that counsel's statements on motion do not constitute new facts. As previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must have been previously unavailable and could not have been discovered earlier in the proceedings. *See* 8 C.F.R. § 3.2(c)(1). Here, counsel's claim on motion is not supported by affidavits, the revised credentials evaluation, or other documentary evidence. In addition, according to the AAO, the Department of Labor (DOL) had determined that employers require a master's degree in the specific specialties of either economics or marketing for a market research analyst position. As such, the beneficiary's combined academic education and work experience would not qualify him for a market research analyst position because counsel alleges that they are the equivalent of a master's degree in business administration.

The evidence also fails to satisfy the requirements of a motion to reconsider. Although counsel states that the AAO did not consider that the beneficiary's combined academic education and experience are the equivalent of a master's degree in business administration, counsel does not support his assertion by any pertinent precedent decisions or establish that the AAO misinterpreted the evidence of record. Notably, as previously discussed, the AAO found that the Department of Labor (DOL) had determined that employers require a master's degree in the specific specialties of either economics or marketing for a market research analyst position. Again, the beneficiary's combined academic education and work experience would not qualify him for a

market research analyst position: counsel alleges that they are the equivalent of a master's degree in business administration

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.

ORDER: The motion is dismissed. The previous decision of the AAO, dated December 19, 2002, is affirmed. The petition is denied.