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Services

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[redacted]

JUN 03 2004

FILE: SRC 02 244 51783 Office: TEXAS SERVICE CENTER Date:

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.

Marie Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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. The motion will be dismissed.

The petitioner is an air transport company that seeks to employ the beneficiary as a pilot-in-command. 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 because the proffered position is not a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel submits evidence in support of his contention that a degree in a specific specialty is a common industry requirement. Counsel also reiterates his position that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

Counsel's submission of additional evidence does not satisfy the requirements of a motion to reopen. 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).

On motion, counsel submits two pilot job postings and four excerpts from college and student sources of information about aviation careers. 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 be material and unavailable previously, and could not have been discovered earlier in the proceeding. *See* 8 C.F.R. § 1003.23(b)(3). Here, the motion fails to present facts that were previously unavailable.

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 April 21, 2003, is affirmed. The petition is denied.