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U.S. Citizenship and Immigration Services

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FILE: WAC 01 058 52150 Office: CALIFORNIA SERVICE CENTER Date: JUN 0 8 2004

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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The [redacted] 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.

The petitioner engages in the import/export, wholesale, and retail of products. It seeks to employ the beneficiary as a purchase price analyst. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

On motion, counsel states that based on additional evidence the petitioner files a motion to reopen. Counsel claims that the petitioner has always required a bachelor's degree in business administration or a closely related field as a minimum requirement for the proffered position. Counsel states that the two employees occupying the petitioner's purchase price analyst positions possess bachelor's degrees: one employee holds a bachelor's degree in business administration; the other holds a bachelor's degree in commerce and has an approved H-1B petition. Counsel submits copies of the two employees' bachelor's degrees and transcripts. Counsel also submits business related evidence of the petitioner's growth such as commercial lease agreements, property purchase agreements, tax returns, and Forms DE-6, and trademark registration.

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). Generally, the new facts must have been previously unavailable and could not have been discovered earlier in the proceedings. *See* 8 C.F.R. § 1003.2(c)(1).

On motion, counsel submits additional evidence. Nevertheless, the evidence does not constitute new facts. The evidence constitutes part of the petitioner's hiring practices; thus, the documents were certainly available to the petitioner and could have been discovered and provided earlier in the proceedings. Accordingly, the evidence contained in this motion is not "new" for the purpose of a motion to reopen.

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 [redacted] The petition is denied.