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U.S. Citizenship  
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Services

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FILE: LIN 04 019 54151 Office: NEBRASKA SERVICE CENTER Date: NOV 03 2006

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

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The petitioner filed an appeal, which was denied by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed. The petition will be denied.

The petitioner is a Japanese restaurant. It seeks to employ the beneficiary as a sushi chef and to classify him as a nonimmigrant worker in a specialty occupation 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). The director denied the petition on the grounds that the record failed to establish that the proffered position is a specialty occupation or that the beneficiary is qualified to perform services in a specialty occupation. The AAO denied the appeal on the ground that the proffered position is not a specialty occupation, and did not address the issue of the beneficiary's qualifications because it was inconsequential in the absence of a specialty occupation.

Motions to reopen or reconsider are governed by regulations at 8 C.F.R. § 103.5. As provided in 8 C.F.R. § 103.5(a)(1), "when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision." The requirements of a motion to reopen are specified in 8 C.F.R. § 103.5(a)(2):

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 requirements of a motion to reconsider are specified in 8 C.F.R. § 103.5(a)(3):

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 [Citizenship and Immigration Services] policy.

In support of its motion the petitioner submits a brief essentially restating previous arguments that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of the occupation. The petitioner does not state any new facts, supported by affidavits or documentary evidence, as required in a motion to reopen. Nor does the petitioner state any reasons for reconsideration, supported by precedent decisions, to establish that the decision was based on an incorrect application of law or policy, as required in a motion to reconsider. Though the petitioner quotes an excerpt from the Department of Labor's *Occupational Outlook Handbook* about the training and experience of executive chefs and cooks, the particular language highlighted by the petitioner was considered both in the director's and in the AAO's decision. The petitioner does not explain how the quoted language demonstrates that the proffered position qualifies as a specialty occupation. Thus, the petitioner's submission does not satisfy the requirements of either a motion to reopen or a motion to reconsider and does not show proper cause for favorable action by the AAO.

As provided in 8 C.F.R. § 103.5(a)(4): "A motion that does not meet the applicable requirements shall be dismissed." Accordingly, the petitioner's motion to reopen or reconsider must be dismissed.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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**ORDER:** The motion is dismissed. The petition is denied.