

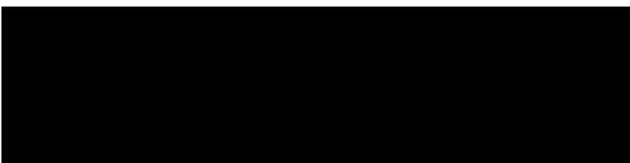
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: WAC 02 223 50185 Office: CALIFORNIA SERVICE CENTER Date: JUN 04 2007

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.

for Michael F. X. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner is a travel agency. It seeks to employ the beneficiary as an accountant for one of its 47 branch offices 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 determining that the petitioner had not established that the position comprised the duties of a specialty occupation and that the beneficiary was not qualified to perform the duties of a specialty occupation. On appeal, counsel submitted a brief and documentation. The AAO, upon considering the evidence submitted, dismissed the appeal October 17, 2005.

On motion, counsel for the petitioner asserts the proposed job duties are those of an accountant not a bookkeeper, that the duties of the employer's particular position are so complex or unique that only an individual with a degree can perform them, that a degree requirement is common to the industry in parallel positions among similar organizations, and that the duties of the position are so specialized and complex that they require a baccalaureate degree to perform them. Counsel also asserts that the beneficiary meets the qualifications necessary to perform the duties of the position.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "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." Neither counsel nor the petitioner has submitted new facts supported by affidavits or other documentary evidence on motion. Thus, the regulations mandate the dismissal of the motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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 policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Counsel does not submit new facts or new documentation. Neither has counsel submitted any pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services policy based on the evidence of record at the time of the initial decision. Counsel simply asserts that the AAO decision was based on an incorrect application of the law without substantiating the assertion. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Thus, the record on motion fails to satisfy the requirements of a motion to reconsider.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements

shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

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