U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 2 2 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO) and, on June 27, 2012, the AAO dismissed the appeal. The matter is again before the AAO on a motion to reconsider. The motion will be dismissed.

On the Form I-129 visa petition, the petitioner describes itself as a home health aide company established in 2006. In order to employ the beneficiary in what it designates as a clinical quality assurance/educator position, the petitioner seeks 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to submit sufficient evidence to demonstrate that a credible offer of employment existed for the beneficiary. Counsel for the petitioner submitted an appeal of the denial of the petition. The AAO reviewed the submission and dismissed the appeal, finding that the petitioner (1) failed to establish that it will have a valid employer-employee relationship with the beneficiary in accordance with the applicable statutory and regulatory provisions; (2) failed to establish that a reasonable and credible offer of employment exists between the petitioner and the beneficiary; and (3) failed to establish that the proffered position qualifies as a specialty occupation in accordance with the statutory and regulatory provisions.

The matter is once again before the AAO on a motion to reconsider. As indicated by the check mark at box E of Part 2 of the Form I-290B, counsel for the petitioner elected to file a motion to reconsider.

A motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on an incorrect application of law or USCIS 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. *See* 8 C.F.R. § 103.5(a)(3) (requirements for a motion to reconsider) and the instructions for motions to reconsider at Part 3 of the Form I-290B.[1]

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[1] The provision at 8 C.F.R. § 103.5(a)(3) states the following:

> *Requirements for motion to reconsider.* 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.

This regulation is supplemented by the instructions on the Form I-290B, by operation of the rule at 8 C.F.R. § 103.2(a)(1) that all submissions must comply with the instructions that appear on any form prescribed for those submissions. With regard to motions for reconsideration, Part 3 of the Form I-290B submitted by the petitioner states:

On motion, counsel claims that an offer of employment or employment contract is not required when filing a Form I-129 petition. Nevertheless, counsel claims that the petitioner satisfied the requirement with the November 23, 2009 business justification letter submitted with the initial petition. In addition, counsel submits a copy of the petitioner's offer of employment for the beneficiary. The letter is dated September 16, 2009. Counsel states "the failure to attach an offer of employment letter to the I-129 petition is not fatal. It was just an oversight and the petitioner asks that it be excused." Furthermore, counsel submitted additional evidence "to support [the petitioner's] claim concerning the start-up status of its business and its recent employment of personnel." Specifically, counsel provided the following documents: (1) a letter from the petitioner; (2) a Form 1096, Annual Summary and Transmittal of U.S. Information Returns for 2009; (3) numerous Forms 1099, Miscellaneous Income, issued by the petitioner; (4) Quarterly Wage Withhold Reports for 2010, 2011, and 2012; and (4) a patient roster.

The petitioner and counsel do not cite a statutory or regulatory authority, case law, or precedent decision to establish that the decision was based on an incorrect application of law or USCIS policy. Moreover, the petitioner and counsel do not assert that the decision was incorrect based on the evidence of record at the time of the initial decision. In short, the petitioner and its counsel have not submitted any document that would meet the requirements of a motion to reconsider. Thus, the motion to reconsider must be dismissed.

Moreover, the motion will be dismissed for failing to meet another applicable filing requirement. The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the submission constituting the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirement listed at 8 C.F.R. §103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

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. Here, that burden has not been met. Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decision of the AAO will not be disturbed.

> **Motion to Reconsider:** The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

> [E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission.

ORDER: The motion is dismissed. The previous decision of the AAO, dated June 27, 2012, shall not be disturbed. The petition remains denied.