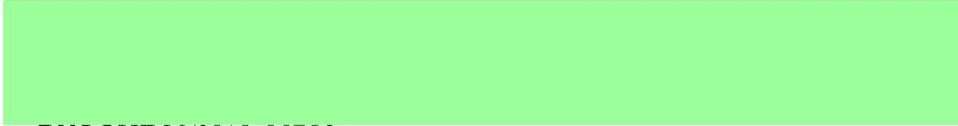
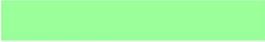


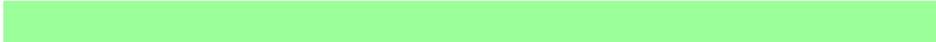


U.S. Citizenship
and Immigration
Services

(b)(6)

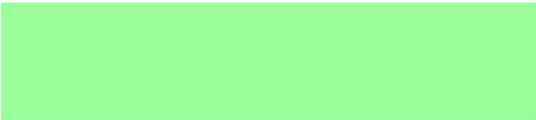


DATE: **AUG 06 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

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 May 29, 2013, 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 non-profit organization, established in 1971, that provides social services for children including day care centers. In order to employ the beneficiary in what it designates as a day care group or head teacher position, the petitioner seeks to classify her 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 establish that the proffered position qualifies as a specialty occupation in accordance with the statutory and regulatory provisions. Counsel for the petitioner submitted an appeal of the denial of the petition. The AAO reviewed the submission and dismissed the appeal.

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 U.S. Citizenship and Immigration (USCIS) policy. A motion to reconsider a decision on a petition must, when filed, 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

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:

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 :

On motion, the petitioner attempts to clarify and explain the evidence previously submitted, as well as provides additional documentation. The petitioner states that "with the foregoing explanations and documentation per *Exhibits A to W*, we are able to consequently clarify and explain all of the AAO's previous questions and negative findings and have now established the fact that the proffered position of Day Care Group or Head Teacher is a 'specialty occupation'."

The petitioner does 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 does not assert that the decision was incorrect based on the evidence of record at the time of the initial decision. In short, the petitioner has not submitted any document that would meet the requirements of a motion to reconsider.

A review of the record and the prior decisions indicates that the director and the AAO properly applied the statute and regulations to the petitioner's case. The director and the AAO have provided the petitioner with detailed statements regarding the requirements to establish eligibility for the benefit sought. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the applicable statutory and regulatory provisions. Based upon a complete review, 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.

ORDER: The motion is dismissed. The previous decision of the AAO, dated May 29, 2013, shall not be disturbed. The petition remains denied.

[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.