



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **FEB 01 2013** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

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:

[Redacted]

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,

*Michael T. Kelly*  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition on May 15, 2009. The Administrative Appeals Office (AAO) dismissed the subsequent appeal on April 5, 2011. The matter is again before the AAO on a Motion to Reconsider. The motion will be dismissed.

The petitioner describes itself as a manufacturer, distributor, and retailer of computer hardware, software and peripheral equipment. It seeks to employ the beneficiary as an accountant. Accordingly, the petitioner endeavors to classify the beneficiary 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 determining that the proffered position was not a specialty occupation. The AAO affirmed the director's denial and dismissed the appeal.

The motion to reconsider consists of: (1) Form I-290B; (2) a brief in support of the motion to reconsider, wherein counsel contends that the AAO erred in its decision to dismiss the appeal; and (3) a copy of that AAO decision to affirm the director's denial and dismiss the appeal.

On motion, counsel contends the AAO misapprehended the actual nature of the proffered position as established in the record of proceeding and, consequently, reached an erroneous decision, by failing to apply the H-1B specialty-occupation standards to the actual evidence of record. Counsel maintains that the position at issue is that of an accountant, but that the Service and the AAO incorrectly characterized the position as more akin to bookkeeping, accounting, and auditing clerk positions.

As will now be discussed, the motion fails to satisfy the requirements for a motion to reconsider a decision, and, therefore, will be dismissed.

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 Services (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.<sup>1</sup>

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<sup>1</sup> The provision at 8 C.F.R. § 103.5(a)(3) states:

*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

On motion, counsel generally alleges that the AAO erred by not recognizing that the evidence of record established the proffered position as an accountant position and by not according adequate attention and weight to the evidence regarding the nature of the petitioner's business operations. Upon review, the AAO finds that the submissions constituting the motion, state reasons for requesting reconsideration, but that they do so in only general and conclusory terms. More importantly, however, the motion fails to specify what particular evidence before it the AAO had failed to consider; fails to cite to any pertinent statutes, regulations, policies, or precedent decisions that the AAO misapplied to the facts of the case; and fails to establish that any such statutes, regulations, policies, or precedent decisions support the reasons for consideration as stated in the motion.<sup>2</sup>

As the submissions constituting this motion to reconsider fail to establish that the AAO's decision dated April 5, 2011 was based upon an incorrect application of law or Service policy to the evidence of record before the AAO when its decision was made, the submissions do not meet the requirements for a motion to reconsider contained in 8 C.F.R. § 103.5(a)(3). Accordingly, the motion must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

It should also be noted that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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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 :

[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.

<sup>2</sup> In addition to the above-cited regulations, the petitioner seeking a motion to reconsider must also submit the motion to reconsider with "a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." 8 C.F.R. § 103.5(a)(1)(iii)(C).

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 decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.