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U.S. Citizenship
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FILE: WAC 04 063 50313 Office: CALIFORNIA SERVICE CENTER Date: JUL 08 2005

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Mari Jensen

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The petitioner filed an appeal of the director's decision. On January 12, 2005, counsel for the petitioner requested that the appeal be withdrawn. On February 4, 2005, the Administrative Appeals Office (AAO) dismissed the appeal based on its withdrawal by counsel. Counsel subsequently filed the instant motion to reconsider. The motion will be dismissed.

On motion, the petitioner asserts that it has never withdrawn this appeal and therefore seeks to have the appeal reinstated.¹ There is no explanation as to why the petitioner's attorney of record, acting on the petitioner's behalf, requested that the appeal be withdrawn if that was not consistent with the petitioner's wishes

The regulation at 8 C.F.R. § 103.5(a)(2) 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.

Although the petitioner has submitted a motion to reconsider, the petitioner does not submit any document that would meet the requirements of a motion to reconsider. The reasons provided for reconsideration, i.e., the petitioner has never withdrawn the appeal -- is not an adequate reason for reconsideration. The petitioner's attorney of record, who was not suspended from practice at the time the AAO issued the decision on the appeal, requested that the appeal be withdrawn in a letter dated December 2, 2004. The petitioner failed to cite any precedent decisions in support of a motion to reconsider. The petitioner does not argue that the previous decision was based on an incorrect application of law or Service policy. The petitioner's motion will be dismissed.

Finally, it should be noted for the record that, unless CIS 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).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[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.

¹It is noted that an attorney who was suspended from practice in the state of Arizona represents the petitioner. See <http://www.supreme.state.az.us/clerk/2005%20SB%20Judgments/Kraeger%20Interim%20Suspension.pdf>, accessed on July 8, 2005. Therefore, the AAO may not recognize counsel in this proceeding.