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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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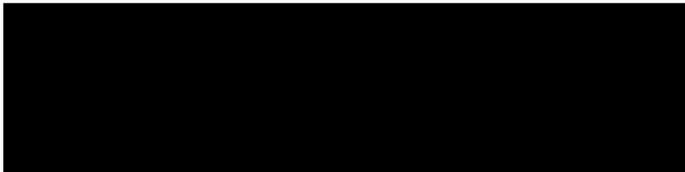
FILE: LIN 03 187 56317 Office: NEBRASKA SERVICE CENTER Date: **SEP 07 2006**

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner is a public non-profit radio and television station that seeks to employ the beneficiary as an electronic engineering technician. 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 on the basis that the proffered position was not specialty occupation. The AAO affirmed the director's findings.

On motion, counsel states that the proffered position is a specialty occupation based on new evidence and changed circumstances.

Counsel did not submit additional evidence. Counsel's brief does not satisfy either the requirements of a motion to reopen or a motion to reconsider. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) 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 Citizenship and Immigration Services (CIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, counsel states that the reason for reopening is that there has been a change in law pertinent to broadcast engineering. Counsel notes that this law was mandated by Congress while the petition was pending. Counsel asserts that the standard set forth is so complex that a university degree or its equivalent is required to obtain proficiency in attaining the DTV or HDTV standard. Counsel contends that the new equipment used in the conversion to digital television is complex. Counsel asserts that he submitted a study commissioned by the broadcast industry. The record does not contain such a study. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On motion, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities/requirements. The petitioner must establish that the position that was offered to the beneficiary at the time the Form I-129 petition was filed is a specialty occupation. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). As noted previously by the AAO, if significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The new assertions regarding the complexity of the job duties as asserted by counsel on motion will not, therefore be considered.

The petitioner fails to meet the criteria for motion to reconsider. The petitioner has failed to state the reasons for reconsideration that are supported by any pertinent precedent decisions to establish that the decision was

based on an incorrect application of law or CIS policy. The petitioner has not provided any evidence of the change in law related to broadcast engineering as alleged above. The petitioner fails to establish that the decision was incorrect based on the evidence of record at the time of the initial appeal. On motion, counsel asserts that the complexity of job duties of the proffered position has changed since the filing of the instant petition. As discussed above, the petition was adjudicated based on the evidence of record at the time of the initial petition.

The evidence fails to satisfy the requirements of a motion to reopen or reconsider. Although counsel states that new evidence and a change in circumstance warrants reversing the decision of the AAO, counsel has submitted no new evidence to support his assertion.

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). 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. The petitioner has not met that burden.

**ORDER:** The motion is dismissed. The previous decision of the AAO, dated March 10, 2005, is affirmed. The petition is denied.