

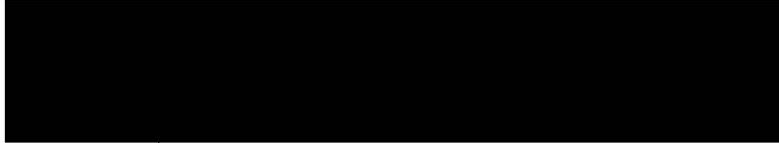
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE: WAC 06 277 51840 Office: CALIFORNIA SERVICE CENTER Date: **OCT 08 2009**

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be dismissed.

The petitioner operates a floral and gift shop. The petitioner claims on the Form I-129 that it employs 14 personnel and has a gross annual income of \$309,512. It seeks to employ the beneficiary as an accounts payable supervisor. 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 position is not a specialty occupation. The AAO affirmed the director's decision.

On motion, counsel asserts that the AAO misclassified the position of Accounts Payable Supervisor and that when the position is correctly classified it is a specialty occupation. Counsel contends that the proffered position is a professional position and is not a clerical position and that the position entails theoretical and practical application of a body of highly specialized knowledge. Counsel disagrees with the AAO's analysis of the professional position evaluation report submitted and asserts that the preparer of the report's conclusions were sufficient and satisfactory. Counsel also notes that the beneficiary holds a bachelor's degree in business administration and that the petitioner desires to employ qualified personnel in its business. Counsel does not submit additional evidence.

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 U.S. Citizenship and Immigration Services (USCIS) 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 submits evidence previously submitted and contends that the AAO did not correctly classify the proffered position. Counsel's statement, however, is not persuasive. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). In addition, as previously stated, a motion to reopen must state the new facts that will be proven if the matter is reopened, and must be supported by affidavits or other documentary evidence. Generally, the new facts must be material and unavailable previously, and could not have been discovered earlier in the proceeding. *See* 8 C.F.R. § 1003.23(b)(3). Here, no evidence in the motion contains new facts that were previously unavailable. The documents submitted on motion are the same documents that the petitioner submitted on appeal and have been duly considered. The petitioner has not satisfied the requirements of a motion to reopen.

The evidence also fails to satisfy the requirements of a motion to reconsider. Counsel's disagreement with the AAO's analysis is not supported by any pertinent precedent decisions

establishing that the analysis was based on an incorrect application of law or USCIS policy; neither does counsel's statements on motion establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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 14, 2008, is affirmed. The petition is denied.