U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 02 141 50011 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
Administrative Appeals Office

**DISCUSSION:** The director of the California Service Center denied the Form I-129 nonimmigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. A motion to reconsider is now before the AAO. The motion will be dismissed. The previous decision shall be affirmed.

The petitioner is a business that designs and builds restroom facilities, with 46 employees. It seeks to employ the beneficiary as a draftsman 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 based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request for evidence; (3) the director's denial letter; (4) the Form I-290B appeal filed on February 20, 2003; (5) the AAO dismissal of that appeal; and (6) counsel's motion to reconsider, submitted on June 3, 2004.

The issue is whether the petitioner's motion warrants AAO reconsideration of its summary dismissal of the petitioner's February 20, 2003 appeal.

Requirements for the filing of a motion to reconsider are found, in pertinent part, at 8 C.F.R. §§ 103.5(a)(3) and (4):

> (3) *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.
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> (4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed . . . .

In the instant case, the petitioner's motion does not satisfy these regulatory requirements. Although counsel has submitted a "Motion to Reconsider," he does not state any reasons for AAO reconsideration of the dismissal, nor cite any precedent decisions in support of a motion to reconsider. He does not assert that the AAO committed an error in dismissing the petitioner's appeal, but concedes that the appeal failed to identify any specific erroneous conclusion of law or statement of fact on which the director's denial was based, the basis of the AAO's summary dismissal. 8 C.F.R. § 103.3(a)(1)(v). Accordingly, the AAO will dismiss the petitioner's motion. It will not reconsider its summary dismissal of the petitioner's appeal.

The AAO notes that the petitioner's motion raises arguments intended to refute the grounds on which the director denied the Form I-129. However, the issue before the AAO is not the director's denial of the Form I-129, but whether its summary dismissal of the petitioner's appeal should be reconsidered. Therefore, counsel's statements regarding the proffered position will not be addressed in these proceedings.

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.

**ORDER:** The motion to reconsider is dismissed. The summary dismissal of the appeal is affirmed.