



U.S. Citizenship
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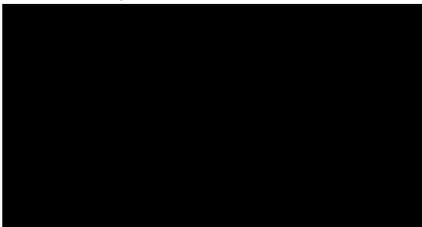


FILE: EAC 02 134 51432 Office: VERMONT SERVICE CENTER Date: OCT 04 2005

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:



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 Nebraska Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a real estate agency that seeks to employ the beneficiary as a contract administrator. The director denied the petition on the basis that the proposed position is not a specialty occupation, and the AAO dismissed a subsequent appeal.

On motion, counsel submits the following documents:

- 1) An April 16, 2004 letter from the petitioner;
- 2) An undated letter from Re/Max 2000;
- 3) An article from the *Handbook* about real estate brokers and sales agents;
- 4) A May 24, 2004 letter from [REDACTED] with [REDACTED] a Community Development Corporation; and
- 5) A May 1, 2004 letter from [REDACTED] with LRA Worldwide.

Counsel states the evidentiary record reflects that the proposed position qualifies as a specialty occupation.

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). Generally, the new facts must have been previously unavailable and could not have been discovered earlier in the proceedings. *See* 8 C.F.R. § 1003.2(c)(1). Here, the submitted evidence does not present “new” facts to be proved in the reopened proceeding. The April 16, 2004 letter from the petitioner, the undated letter from Re/Max 2000, the letter from [REDACTED], and the May 1, 2004 letter from [REDACTED] contain the same assertions that the AAO previously considered on appeal, which is that the proposed position requires bilingual and bilcultural skills, and knowledge of the legal system in the United States and in Spanish speaking countries. As the AAO already considered these assertions in the March 30, 2004 decision, this evidence does not present new facts. In the March 30, 2004 decision the AAO also discussed the *Handbook's* information; thus, this evidence on motion does not present new facts. The letters and information from the *Handbook* therefore fail to satisfy the requirements for a motion to reopen.

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 does not indicate any reasons for reconsideration of the AAO's decision; accordingly, counsel fails to satisfy the requirements of a motion to reopen or a motion to reconsider.

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.

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ORDER: The motion is dismissed. The previous decision of the AAO, dated December 16, 2003, is affirmed. The petition is denied.