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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 02 108 51666 Office: VERMONT SERVICE CENTER Date: **OCT 31 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:  
[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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 telecommunications equipment company that seeks to employ the beneficiary as an account territory representative. 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 did not meet the definition of a specialty occupation and that the beneficiary was not qualified to perform the duties of a specialty occupation. The AAO dismissed the subsequent appeal because it found that the proffered position did not qualify as a specialty occupation and failed to meet any of the criteria of pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A).

On motion, counsel reasserts that the petitioner established the need of a bachelor of science degree in political science or government administration as a minimum requirement to perform the duties of an account territory representative. On appeal, the petitioner submitted statements from: Lisa McIlveen, owner of Teltech Communications; and Scott Sproule, majority owner of Express Telecom. The AAO noted that neither opinion was sufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The AAO noted that two opinion letters from organizations based solely on the education and experience of their authors is insufficient in scope to establish an industry standard. On motion, the petitioner submits additional letters from three individuals.

The three letters do 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). The motion asserts that the letters are offered to establish the need in the position for a baccalaureate degree in a specialty, as distinguished from the sales representative position in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). Neither the motion nor the letter constitute new facts. The letter from Lance Roncalli, president of Fiberlink International Corporation indicates that a bachelor's degree is essential to the position. The second letter is from Kenneth M. Atkinson of Grant Thompson which is a firm of certified chartered accountants and management consultants. Mr. Atkinson opines that there are two independent reasons why a baccalaureate or higher degree is required. The first reason is that the social and political structure of companies in Asian countries as well as their governments and societies will not accord any employees recognition unless that employee has a minimum of a university degree and that the developing market for technology is a heavily government regulated market. This author states "wireless telecommunication . . . is subject to increasingly complex government regulation and the knowledge of the ways of dealing with the regulation would be gained with a degree in either political science or law." The petitioner also submits a letter from Alvin DG. Tolentino of Express Telecommunication Company, Inc. who opines that the types of degrees "which are appropriate include both marketing and political science majors depending upon the degree of responsibility and the particular market covered. Political Science is particularly necessary for American firms since they are barred from U.S. law from anything that is not direct public competition." These letters provide no new facts, e.g., that were previously unavailable, and do not 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).

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 January 9, 2004, is affirmed. The petition is denied.