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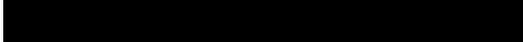
**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 03 167 50239 Office: CALIFORNIA 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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner imports and exports auto parts. It seeks to employ the beneficiary as an accountant. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation, and the AAO dismissed a subsequent appeal.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that any motion to reconsider or reopen must be filed within 30 days of the decision that the motion seeks to reconsider or reopen. The regulation at 8 C.F.R. § 103.5(a)(1)(iii) indicates that the motion is submitted on Form I-290A¹ and may be accompanied by a brief.

Counsel submitted a timely Form I-290B on April 22, 2005 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. However, unlike an appeal, where a petitioner may submit a brief or additional evidence after the filing of the Form I-290B, the brief or additional evidence must comprise the motion.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Furthermore, 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

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.

On the Form I-290B, counsel does not state the new facts to be provided in the reopened proceeding; nor does counsel state the reasons for reconsideration. The motion was not accompanied by affidavits or other documentary evidence or a brief. The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

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 is dismissed.

¹ The Form I-290B is accepted for both motions and appeals.