

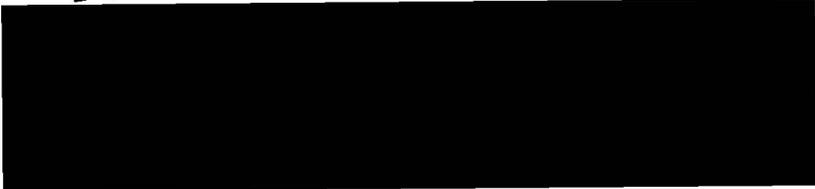
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U.S. Citizenship
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FILE: LIN 04 224 51580 Office: NEBRASKA SERVICE CENTER Date: SEP 08 2006

IN RE: Petitioner:
Beneficiary:



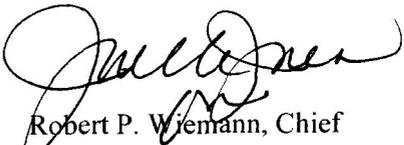
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

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

The petitioner is a physical rehabilitation facility that also provides physical rehabilitation services in private homes. It seeks to employ the beneficiary as a physical therapy technician 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 petitioner had not established that the proffered position met the requirements of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO concurred in the director's decision and observed further that the petitioner had not established that the beneficiary had obtained the necessary license to perform as a physical therapy assistant.

On motion, the petitioner's representative requested an additional 90 days to submit a brief but did not identify the reasons for the extension of time. The petitioner also requested the opportunity to present oral arguments.

The petitioner's motion does not meet applicable requirements. The petitioner's representative proposed to furnish additional evidence in 90 days.¹ Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3). Accordingly, the motion must be dismissed for failing to meet applicable requirements.

In addition, it is noted that a foreign attorney prepared the initial appeal as well as the motion currently before the AAO. The record does not provide evidence that the foreign attorney is a licensed attorney in the United States or has been otherwise recognized as an accredited representative authorized to undertake representations on the petitioner's behalf. *See* 8 C.F.R. § 292.1. Accordingly, the foreign attorney may not represent the petitioner in this proceeding and his assertions will not be considered.

Of note, the regulations provide that the requesting party must explain in writing why oral argument is necessary. The petitioner does not provide any reasoning to suggest the necessity of oral argument. Moreover, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in matters involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the record does not contain nor does the petitioner identify any unique factors or issues of law to be resolved. Consequently, the request for oral argument is denied.

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."

¹ Although the petitioner's representative proposed to submit a detailed brief in support of the motion in 90 days, the record does not contain such a brief in support of the motion.

The regulation at 8 C.F.R. § 103.5(a)(3) 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.

The petitioner has not submitted new facts supported by affidavits or other documentary evidence. The petitioner has not submitted any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy based on the evidence of record at the time of the initial decision. The petitioner fails to establish that the decision was an incorrect application of the law by pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record. The evidence fails to satisfy the requirements of a motion to reconsider.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The regulation at 8 C.F.R. § 103.5(a)(4) states: "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be denied, the proceedings will not be reopened, and the previous decision of the AAO will be affirmed.

ORDER: The decision of the AAO is affirmed. The petition is denied.