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U.S. Citizenship
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Services

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02

JUL 09 2007

FILE: EAC 03 167 50422 Office: VERMONT SERVICE CENTER Date:

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.

James Blunzinger, Jr.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 dismissed.

The petitioner is a travel agency. It seeks to employ the beneficiary as a travel-marketing specialist 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: (1) the petitioner failed to establish that the proffered position was a specialty occupation; and (2) the petitioner failed to establish that the beneficiary was qualified to perform the duties of a specialty occupation.

In a December 28, 2005 decision, the AAO observed that the petitioner had submitted evidence establishing the beneficiary's foreign degree as equivalent to a bachelor's degree in marketing from a United States college or university, but determined that the position offered was not a specialty occupation. Thus the AAO did not disturb the director's decision denying the petition.

On January 30, 2006, the AAO received a motion to reopen or to reconsider its prior decision. Counsel for the petitioner asserted that the proffered position should have been considered a specialty occupation and requested 30 days to submit a brief in support of the motion to reconsider. Counsel also asserted that the AAO should reopen the matter based on new facts which demonstrate that the position offered to the beneficiary is of H-1B caliber and that the beneficiary was qualified to perform the duties of the position. Counsel again requested 30 days to file additional evidence of the new facts and a brief supporting the motion to reopen. Counsel also attached a January 25, 2005 letter¹ from the petitioner's president detailing the knowledge and skills needed to accomplish the duties associated with the proffered position. The January 25, 2005 letter lists almost two pages of the petitioner's expectations for the proffered position, information that significantly alters the original duties of the position and thus the evidence before the director and the AAO on appeal. On June 20, 2006, the AAO received counsel's brief in support of the motion, several letters from other travel agencies, and several job advertisements for positions within the travel industry.

Preliminarily, the AAO observes that an affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three days are added to the proscribed period. 8 C.F.R. § 103.5a(b). 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).

In this matter, counsel for the petitioner submits a brief and additional documentation approximately five months after its initial submission. Counsel's brief and the additional documents do not comply with the applicable rules for a motion to reconsider or reopen. Accordingly, the late-submitted brief and documents will not be considered. Thus, the documents comprising the motion consist of counsel's January 27, 2006 letter and the petitioner's January 25, 2005 (2006) letter.

¹ Although the letter is dated January 25, 2005, it includes an attachment from the petitioner's website dated January 25, 2006; thus it appears the date on the letter is a typographical error.

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."

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.

In this matter, the petitioner's January 25, 2005 letter also fails to meet the requirements of a motion to reopen and a motion to reconsider. First, a motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The petitioner's statement provided on motion is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does the statement contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Such unsworn statements made in support of a motion are not evidence and thus, as is the case with the arguments of counsel, are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Second, the petitioner's statement does not provide new facts in connection with the initial position, is not supported by documentary evidence, and attempts to significantly alter the requirements of the proffered position. The petitioner's statement is not an elaboration of the initially described duties but rather seeks to expand the initially described duties into a different position. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Third, the petitioner fails to establish that the decision was an incorrect application of the law by pertinent precedent decisions, or to address the perceived inadequacies and misinterpretations of the evidence of record. The petitioner has failed to satisfy the requirements of a motion to reconsider.

In conclusion, 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 a result of an incorrect application of the law by pertinent precedent decisions, or establish that the director or the AAO misinterpreted the evidence of record.

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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 December 28, 2005, is affirmed. The petition is denied.