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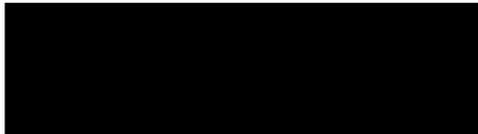


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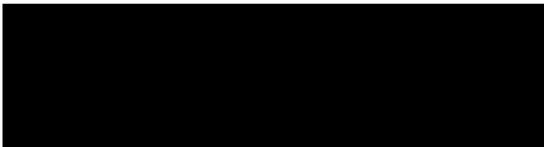
FILE: SRC 02 268 50798 Office: TEXAS SERVICE CENTER Date:

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.

Robert P. Wiemann, Chief
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 reconsider. The motion will be dismissed.

The petitioner is a custom home builder, and seeks to employ the beneficiary as a computer specialist. It endeavors to classify him 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 ground that the proffered position is not a specialty occupation. The AAO affirmed the director's findings.

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 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).

The petitioner has not provided pertinent precedent decisions to establish that the prior decision was based on an incorrect application of law or CIS policy. On motion, the petitioner references the Department of Labor's *Occupational Outlook Handbook (Handbook)* and provides copies of Internet job advertisements for computer support specialists and related positions. The advertisements are of little evidentiary value, however, as they are not from organizations similar in nature and scope to that of the petitioner. Thus, the advertisements do not establish that a degree in a specific specialty is required in parallel positions among similar organizations. Further, the *Handbook* notes that there is no universally accepted way to prepare for a job as a computer support specialist, but that many employers prefer to hire people with some formal college education. Some jobs require a bachelor's degree, while others require only an associate's degree. The duties of the proffered position were described by the petitioner as follows: updating, repairing and testing computer systems; resolving computer-related problems in Auto-CAD; using Auto-CAD to design construction based on customer requirements; and creating designated software products to be used by the petitioner using Auto-CAD. As described by the petitioner, the duties are not anymore unique, specialized or complex than those routinely performed by computer support specialists in the industry with less than a baccalaureate level education. The petitioner has failed to establish that the prior decision of the AAO was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The record reflects, and the prior decision correctly states, that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

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