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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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

D2

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 01 2010

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:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (VSC), denied the nonimmigrant visa petition, and the petitioner's appeal to the Administrative Appeals Office (AAO) was summarily dismissed. The matter is again before the AAO on a motion to reopen/reconsider. The motion will be dismissed.

The petitioner is a martial arts school that was established in 2003 and has two employees. It seeks to employ the beneficiary as a taekwondo instructor. Accordingly, 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, finding that the job offered is not a specialty occupation. Counsel for the petitioner submitted a timely Form I-290B, Notice of Appeal on August 15, 2008. Counsel noted on the Form I-290B that a separate brief and/or evidence would be submitted within 30 days. However, no supplemental evidence was submitted. Consequently, the AAO summarily dismissed the appeal on December 3, 2009.

Counsel submitted the motion to reopen and reconsider currently before the AAO to the VSC on January 5, 2010. On the form, counsel states:

Please be advised that the necessary supporting documentation was in fact submitted in connection with the aforementioned appeal and is attached herewith. As a result, kindly reopen this case for adjudication based upon the supporting evidence.

A cover letter from counsel, dated January 4, 2010, is also submitted and makes reference to supporting documentation. However, a review of the record indicates that no supplemental evidence was submitted in support of the petitioner's appeal, and, likewise, no supporting documentation was included with the petitioner's motion currently before the AAO.

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.

Counsel has not submitted any new evidence and has not stated any reasons for reconsideration of the AAO decision in this matter. Moreover, despite counsel's claim that supporting documentation was previously submitted in support of the August 2008 appeal to the AAO, the record contains no such evidence, nor does counsel provide a copy of such evidence with this motion. While counsel claims to submit supporting

documentation with this motion, no documentation other than a generic cover letter is included with Form I-290B.

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. 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 dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

**ORDER:** The motion is dismissed.