

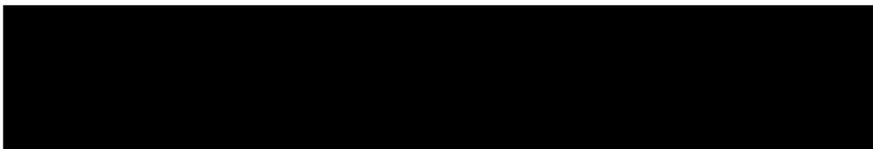
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



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



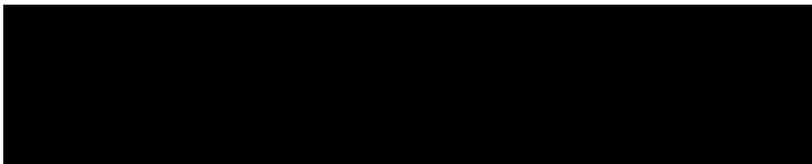
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Date: **APR 29 2011** Office: CALIFORNIA SERVICE CENTER FILE: WAC 02 288 50680

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:



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 \$630. 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 service center director denied the instant nonimmigrant visa petition. The petitioner appealed from that decision, and the appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO pursuant to a motion to reconsider. The motion will be dismissed.

The petitioner has retained several attorneys during the pendency of this petition. The instant motion was submitted with a Form G-28, Notice of Entry of Appearance, recognizing present counsel. Copies of this decision will be furnished only to the petitioner and the petitioner's present counsel of record.

On the Form I-129 visa petition, the petitioner states that it is a preschool and kindergarten. In order to employ the beneficiary in what it designates as a preschool teacher position, the petitioner seeks 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner's then counsel filed an appeal, which was dismissed. The petitioner's current counsel filed the instant motion. The body of the motion reads, in its entirety:

On behalf of [the petitioner] I am herewith filing a Motion for Reconsideration from the [AAO's] decision of January 31, 2005 in which the appeal by said organization was denied.

In accordance with this Motion for Reconsideration I am herewith attaching an original Form G-28, Notice of Entry of Appearance as Attorney or Representative as executed by [the petitioner's owner] and I am herewith requesting a period of up to and including April 4, 2005 in which to file my brief in support of this Motion directly with the [AAO].

This request for additional time in which to file said brief is necessary in order to allow sufficient time for the undersigned to retrieve a copy of the administrative file from the Peter's former legal representative.

No further evidence or argument was submitted, either with that motion or subsequently.

The regulation at 8 C.F.R. § 103.5 pertains to motions for reconsideration. Subsection (a)(1)(iii) states, in pertinent part:

Filing Requirements -- A motion shall be submitted on Form I-290B It must be:

* * *

- (C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding

The regulation at 8 C.F.R. §103.5(a)(3) states, in pertinent part:

Requirements for motion to reconsider. 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.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part:

Processing motions in proceedings before the Service: A motion that does not meet applicable requirements shall be dismissed.

The instant motion was not submitted on Form I-290B. It does not, therefore, meet the initial requirement of 8 C.F.R. §103.5(a)(1)(iii).

The instant motion was not accompanied by a statement pertinent to whether validity of the decision on appeal is, or was, the subject of a judicial proceeding. It does not, therefore, meet the requirement of 8 C.F.R. §103.5(a)(1)(iii)(C).

The instant motion does not state the reasons for reconsideration. It does not, therefore, meet that requirement of 8 C.F.R. §103.5(a)(3).

For all three reasons, the instant motion will be dismissed pursuant to 8 C.F.R. § 103.5(a)(4)

ORDER: The motion is dismissed.