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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., MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



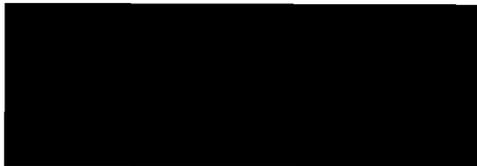
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Date: JUN 02 2011 Office: CALIFORNIA SERVICE CENTER FILE:

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:

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,

for Michael T. Kelly
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a combined motion to reopen and to reconsider. The motion will be dismissed.

The petitioner is a for-profit enterprise engaged in home health services that seeks to employ the beneficiary in a position identified on the Form I-129 and the accompanying labor condition application as a medical records specialist. The petitioner, therefore, 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 based upon her finding that the proffered position is not a specialty occupation, and the AAO affirmed the director's findings on appeal. On motion, newly-retained counsel for the petitioner contends that both the director and the AAO erred in concluding that the proffered position was not a specialty occupation.

The motion consists of a brief and the following documentary evidence:

1. A copy of the section entitled "Medical and Health Services Managers" from the 2008-2009 edition of the *Occupational Outlook Handbook (Handbook)*; and
2. A copy of the petitioner's organizational chart.

As will now be discussed, these submissions do not satisfy the requirements of either a motion to reopen or a motion to reconsider. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Accordingly, this combined motion will be dismissed.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Generally, the evidence sought to be reviewed as presenting new facts must be material, previously unavailable, and not discoverable earlier in the proceeding. *See* 8 C.F.R. § 1003.23(b)(3).

A review of the evidence submitted on motion reveals no facts that can be considered *new* within the sense required to merit reopening a decision under 8 C.F.R. 103.5(a)(2). The excerpt from the *Handbook's* 2008-2009 edition was cited by the AAO in its previous decision, and the organizational chart (which modifies the one previously submitted as Annex B to the petitioner's response to the director's request for evidence) does not represent information previously unavailable to the petitioner about its own organization and the proffered position's place within it. The brief does not cite any evidence previously unavailable to the petitioner, and the motion includes no affidavits in support. Accordingly, the motion does not meet the requirements for a motion to reopen.

As will now be discussed, the motion also fails to satisfy the requirements for a motion to reconsider a decision.

A motion to reconsider must state the reasons for reconsideration and be supported by citations to pertinent statutes, regulations, and/or precedent decisions to establish that the decision was based on

an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) 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. See 8 C.F.R. § 103.5(a)(3) (requirements for a motion to reconsider) and the instructions for motions to reconsider at Part 3 of the Form I-290B.¹

Although counsel states that the decision to deny the petition was an incorrect application of the law, he does not support this assertion with any pertinent precedent decisions, nor does he establish that the director misinterpreted the evidence of record.

The motion asserts that the petitioner's former counsel failed to precisely ascertain the nature of the proffered position in this matter, thereby resulting in a flawed job description and an inaccurate job title for the proffered position. The motion also contends that the AAO erred by not considering the proffered position as a Health Information Manager position, and, further, that the AAO's conclusion that the occupation of Medical and Health Services Manager was not a specialty occupation was incorrect. The motion also asserts that the director's findings "[appear] to have been a misapplication of law or policy by the AAO." However, the submissions constituting the motion fail to articulate how specific statutes, regulations, and/or precedent decisions support these claims. Accordingly, the motion fails to satisfy the requirements of a motion to reconsider.

¹ The provision at 8 C.F.R. § 103.5(a)(3) states:

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. 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.

This regulation is supplemented by the instructions on the Form I-290B, by operation of the rule at 8 C.F.R. § 103.2(a)(1) that all submissions must comply with the instructions that appear on any form prescribed for those submissions. With regard to motions for reconsideration, Part 3 of the Form I-290B submitted by the petitioner states:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions.

The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

[E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission.

Finally, the motion shall be dismissed for failing to meet another applicable filing requirement. The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Again, the regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirement listed at 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

It should be noted for the record that, unless USCIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

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

ORDER: The motion is dismissed.