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

D2



Date: **APR 04 2012** 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On September 23, 2009, the Director, California Service Center, denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO) and, on October 25, 2011, the AAO dismissed the appeal. The matter is again before the AAO on a motion to reconsider. The motion will be dismissed.

The petitioner claims to be a food service (chain) company established in 2000. It seeks to continue to employ the beneficiary as a financial manager and 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, finding that the petitioner failed to establish that the proffered position is a specialty occupation. The AAO affirmed the director's denial, denied the petition on the additional ground that the petitioner failed to demonstrate that the beneficiary was qualified to perform the duties of a specialty occupation, and dismissed the appeal on those two bases.

On November 28, 2011, the petitioner submitted a Form I-290B (Notice of Appeal or Motion), without a brief or evidence. The only comment that the petitioner submits about the motion is the following statement at Part 3 of the Form I-290B:

We are requesting that the AAU reconsider its decision dated October 25, 2011 denying the H1 petition. We are requesting additional time to submit a brief in support of this request.¹

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 and must establish that the contested decision was incorrect based on the evidence of record at the time of that decision. 8 C.F.R. § 103.5(a)(3). Further, a motion must 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 and, if so, the court, nature, date, and status or result of the proceeding." 8 C.F.R. § 103.5(a)(1)(iii)(C). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

As the petitioner failed to state the reasons for reconsideration and to establish that the AAO's decision dated October 25, 2011 was incorrect based on the evidence of record at the time that decision was issued, the instant submission does not meet the requirements for a motion contained in 8 C.F.R. § 103.5(a)(3). Accordingly, it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

¹ It is noted that neither the Form I-290B nor the regulations at 8 C.F.R. § 103.5 permit a brief to be filed separately from a motion. Motion briefs must instead be filed with the Form I-290B. Prior to the issuance of this decision, the AAO received a brief in support of the motion to reconsider. However, as the brief was not submitted with the motion as required by the regulations and the Form I-290B, it may not be included in this record of proceeding and consequently may not be considered.

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The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed.