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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

DATE: JUN 21 2013

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the California Service Center (the director) denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal. The matter is again before the AAO on a motion to reconsider. The motion will be dismissed. The petition will remain denied.

In the Form I-129 visa petition, the petitioner describes itself as a bilingual French/English school for children established in 1989. In order to employ the beneficiary in what it designates as a market research analyst position, the petitioner seeks to classify her 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 qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Counsel for the petitioner submitted an appeal to the AAO, which was dismissed. Counsel for the petitioner filed this motion to reconsider.

The record of proceeding before the AAO contains: (1) the Form I-129 petition and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the director's decision; (5) the Form I-290B appeal; (6) the AAO's decision dismissing the appeal; (7) the Form I-290B motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

Upon review, the AAO finds that the instant motion must be dismissed for failing to meet the requirements for motion to reconsider. 8 C.F.R. §§ 103.5(a)(3), (4). Specifically, counsel fails 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 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 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.<sup>1</sup>

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<sup>1</sup> The regulation at 8 C.F.R. § 103.5(a)(3) is supplemented by the instructions on the Form I-290B, by operation of the rule at 8 C.F.R. § 103.2(a)(1). 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:

Every benefit request . . . submitted to DHS must be executed and filed in accordance with the form instructions . . . and such instructions are incorporated into the regulations requiring its submission. . . .

In the instant case, counsel states in the Form I-290B that "the requirement that the degree must be in a specific academic major has recently been explicitly rejected by a United States District Court," and cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) in support of her claim. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court, even in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Accordingly, counsel's reliance on a district court's decision is misplaced; it is not considered a precedent decision. *See* 8 C.F.R. § 103.3(c).

On motion, counsel argues the underlying merits of the petitioner's claim that it is offering a specialty occupation position to the beneficiary; however, counsel fails to demonstrate that the prior adverse decisions in this matter were incorrect based upon the evidence of record at the time of the initial decision. Other than the one district court decision, counsel does not cite to any statutes, regulations or pertinent precedent decisions to establish that the director or the AAO misapplied the law or failed to follow a particular USICS policy. Overall, the evidence on motion fails to demonstrate that the requirements for a motion to reconsider have been satisfied. Consequently, the motion must be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(3).

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

**ORDER:** The motion is dismissed. The previous decision of the AAO, dated August 7, 2012, is affirmed. The petition remains denied.