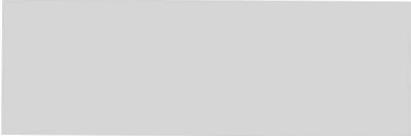




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 29 2015**

PETITION RECEIPT #: 

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office, and we dismissed the appeal. The matter is again before us on a motion to reopen. The motion will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a six-employee "Child Care Facility" established in [REDACTED]. In order to employ the beneficiary in what it designates as a part-time "Health Consultant, Child Development and Safety" 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 evidence did not establish that the proffered position qualifies for classification as a specialty occupation position. We dismissed a subsequent appeal, affirming the Director's decision, and the petitioner filed the instant motion.

#### I. MOTION REQUIREMENTS

For the reasons discussed below, we conclude that this motion will be dismissed because it does not merit reopening.

##### A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a USCIS officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), "*Processing motions in proceedings before the Service*," "[a] motion that does not meet applicable requirements shall be dismissed."

##### B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "*Requirements for motion to reopen*," states:

A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence. . . .

This provision is supplemented by the related instruction at Part 3 of the Form I-290B, which states:<sup>1</sup>

**Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence.

Further, the new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

## II. ANALYSIS

The submission constituting the motion consists of the following: (1) the Form I-290B; (2) a letter from the petitioner dated March 27, 2014; (3) a list of the petitioner's current students; (4) a portion of the U.S. Department of Labor's Occupational Outlook *Handbook* (*Handbook*); (5) an article, entitled *Certified Health Education Specialist Education Requirements*, printed from a website maintained by study.com at [http://study.com/certified\\_health\\_education\\_specialist.html](http://study.com/certified_health_education_specialist.html); (6) several articles published in Summer 2004 by the Healthy Child Care America (HCCA) campaign; and (7) portions of a publication of the American Academy of Pediatrics (AAP) entitled *Caring for Infants and Toddlers in Child Care and Early Education*, published during 2014.

Upon review, we find that the petitioner did not provide any new facts in this motion. It has not demonstrated that any of the documents submitted in support of this motion were previously unavailable and, more to the point, it does not indicate that any of the documents contain any "new facts" within the meaning of 8 C.F.R. § 103.5(a)(2). Further, even if any of the facts in those documents could be construed as new facts, the petitioner has not established that they would change the outcome of this case if the proceeding were reopened.

"There is a strong public interest in bringing [a case] to a close as promptly as is consistent with the interest in giving the [parties] a fair opportunity to develop and present their respective cases." *INS v. Abudu*, 485 U.S. 94, 107 (1988). Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden.

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

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission.



### III. CONCLUSION

The petitioner should note 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).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and our previous decision will not be disturbed.

**ORDER:** The motion is dismissed.