



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 06 2014**

OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:
Beneficiaries:



PETITION: Petition for a Commonwealth of the Northern Mariana Islands (CNMI) Only Nonimmigrant Transitional Worker Classification Pursuant to 48 U.S.C. § 1806(d)

ON BEHALF OF PETITIONER:

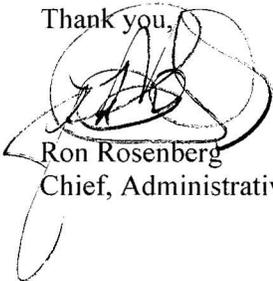
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the petition. The petitioner submitted an appeal, and the Administrative Appeals Office (AAO) summarily dismissed the appeal. Thereafter, the petitioner filed a combined motion to reopen and reconsider, which the AAO dismissed. The matter is again before the AAO on a second combined motion to reopen and reconsider. The combined motion will be dismissed.

I. FACTUAL AND PROCEDURAL BACKGROUND

The petitioner submitted a Petition for a CNMI-Only Nonimmigrant Transitional Worker (Form I-129CW) to the California Service Center on December 2, 2011. On the Form I-129CW petition, the petitioner describes itself as an enterprise engaged in air conditioning, refrigeration, general construction, retail, import/export, restaurant, and marine industrial general services that was established in 2003. In order to employ the beneficiaries in various positions (air-conditioning technician, cook, accountant, and mechanic) the petitioner seeks to classify them as CNMI-Only Nonimmigrant Transitional Workers (CW-1) pursuant to 48 U.S.C. § 1806(d).

The director denied the petition, finding that the petitioner failed to properly file the Form I-129CW for multiple beneficiaries. Specifically, the director noted that to include more than one worker on the same I-129CW petition, all workers must be in the same "occupational category." A petition for multiple beneficiaries is properly filed only when each worker included on the petition (1) has the same occupational category, (2) for the same period of time, and (3) will work in the same location.¹ *See* 8 C.F.R. § 214.2(w)(9).

Thereafter, the petitioner submitted a Notice of Appeal or Motion (Form I-290B) and checked Box A in Part 2 of the form to indicate that it was filing an appeal and that a brief and/or additional evidence was attached. On appeal, the petitioner claimed that it "made an honest mistake in including the beneficiaries in a single petition," and that it "admits in good faith that the initial Form I-129CW petition was improperly filed as the 7 beneficiaries were mistakenly included/lumped together in one petition only."

We reviewed the submission and found (1) that the petitioner's statement on appeal did not identify any errors in the director's decision, and (2) that the petitioner acknowledged that it did not properly file the petition in accordance with the applicable regulatory provisions. Accordingly, we summarily dismissed the appeal.

Subsequently, the petitioner submitted another Form I-290B. The petitioner marked box F in Part 2 of the form to indicate that it was filing a motion to reopen and a motion to reconsider the decision. We reviewed the submission, and dismissed the combined motion. Subsequently, the petitioner

¹ The instructions for the Form I-129CW also indicate that multiple beneficiaries who will seek admission in CW-1 classification may be included in the same petition provided they will: (1) all be working in the same occupation; (2) all employed for the same period of time; (3) all be employed in the same location; and (4) all requesting the same action in Part 2 of the Form I-129CW.

filed the instant combined motion to reopen and reconsider as indicated by the check marked at Box F of Part 2 of the form.

II. MOTION REQUIREMENTS

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:²

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*

² 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.

of *Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); see also *Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

C. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(3), "*Requirements for motion to reconsider*," states:

A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] 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 [(3)], [(a)] when filed, also [(b)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

These provisions are augmented by the related instruction at Part 3 of the Form I-290B, which states:

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

A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. Compare 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider should not be used to raise a legal argument that could have been raised earlier in the proceedings. See *Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991) ("Arguments for consideration on appeal should all be submitted at one time, rather than in piecemeal fashion."). Rather, any "arguments" that are raised in a motion to reconsider should flow from new law or a *de novo* legal determination that could not have been addressed by the affected party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (examining motions to reconsider under a similar scheme provided at 8 C.F.R. § 1003.2(b)); see also *Martinez-Lopez v. Holder*, 704 F.3d 169, 171-72 (1st Cir. 2013). Further, the reiteration of previous arguments or general allegations of error in the prior decision will not suffice. Instead, the affected party must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. See *Matter of O-S-G-*, 24 I&N Dec. at 60.

III. DISCUSSION AND ANALYSIS

A. Dismissal of the Motion to Reopen

The petitioner submitted several exhibits with its submission, consisting of (1) our prior decisions; (2) a declaration by the petitioner's owner; (3) the director's decision; (4) the director's request for evidence; and (5) prior USCIS notices. Upon review of the evidence, we observe that the petitioner

has not provided new evidence that would change the outcome of this case if the proceeding were reopened to consider them.

"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.

B. Dismissal of the Motion to Reconsider

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) (detailing the requirements for a motion to reconsider).

The petitioner asserts that we erred in our prior decision. The documents constituting this motion do not, however, articulate how our prior decision misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when the decision to dismiss the combined motion was rendered. The petitioner has therefore not submitted any document that would meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider must be dismissed.

IV. 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 combined motion will be dismissed, the proceedings will not be reopened or reconsidered, and our previous decision will not be disturbed.

ORDER: The combined motion is dismissed.