



U.S. Citizenship
and Immigration
Services

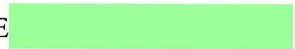
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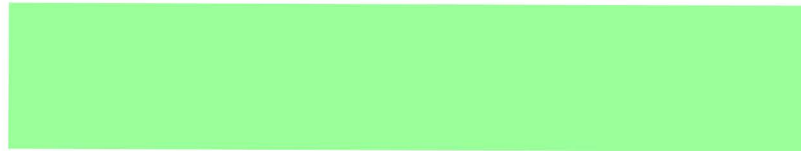
DATE: **AUG 26 2014**

OFFICE: VERMONT SERVICE CENTER

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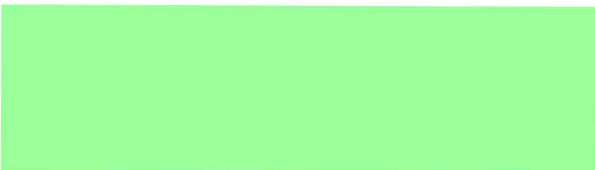


IN RE: Petitioner:
Beneficiary:



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 (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 (hereinafter "director") denied the nonimmigrant visa petition and affirmed that decision on motion. The petitioner appealed to the Administrative Appeals Office. We dismissed the petitioner's appeal and a subsequent motion to reopen and motion to reconsider. The matter is again before us on a combined motion to reopen and motion to reconsider. The combined motion will be dismissed.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a "Retail hotel operations" firm established in 1990. A letter submitted by counsel with this latest motion states that the petitioner is a general partnership that owns and operates a [REDACTED] with 14 full-time employees. In order to employ the beneficiary in what it designates as a "General Manager" position, the petitioner seeks 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, concluding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner, through counsel, submitted a combined motion to reopen and reconsider to the service center. On April 18, 2012, the director affirmed the previous decision denying the visa petition.

The petitioner, through counsel, filed an appeal, which we dismissed on June 27, 2013. The petitioner subsequently filed a motion to reopen and reconsider that decision. We dismissed that combined motion to reopen and reconsider on December 23, 2013. The petitioner submitted a second combined motion to reopen and reconsider, which is presently before us.

II. OVERARCHING REQUIREMENTS 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."

III. REQUIREMENTS FOR A MOTION 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:¹

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).

IV. REQUIREMENTS FOR A MOTION 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, when filed, also 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.

¹ 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.

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.

V. DISCUSSION AND ANALYSIS

The submission constituting the combined motion consists chiefly of counsel's brief. It includes some web content printed from the websites of the Tennessee State Board of Accountancy and the American Institute of Certified Public Accountants, but those documents have no apparent relevance to whether the position proffered in the instant case requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

In his brief submitted with the instant motion, counsel asserts that evidence previously submitted demonstrates that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. As such, counsel has alleged no new facts and the motion to reopen must, therefore, be dismissed. The remaining consideration is the motion to reconsider.

As noted above, 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).

Counsel contends in the instant motion that we failed to:

[C]onsider or respond to Petitioner's evidence that, in addition to requiring the attainment of a Bachelor's Degree, the position satisfies every other standard of a specialty occupation as set forth in the Code of Federal Regulations, thereby

demonstrating that the position does, in fact, require the theoretical and practical application of a body of highly specialized knowledge.

The documents constituting this motion do not, however, articulate how our decision on motion 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.

Even if we could grant the motion to reopen and/or the motion to reconsider, the petition would still not be approvable. In analyzing the evidence, we observe that the petitioner has never alleged that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. That is, in the undated letter submitted with the visa petition, the petitioner's CEO stated that the proffered position requires a bachelor's degree or the foreign equivalent in business administration, accounting or hospitality. A description of the proffered position submitted in response to the RFE indicates that it requires a bachelor's degree in business administration or hospitality. In his December 28, 2011 and July 29, 2013 letters, the petitioner's CEO stated that the petitioner requires a bachelor's degree or its equivalent in business or a related field for the proffered position. In each instance, the petitioner has indicated that an otherwise undifferentiated bachelor's degree in business administration would be a sufficient qualification for the proffered position. Neither the petitioner nor counsel has ever alleged otherwise.

A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner's acknowledgement that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the proffered position indicates that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent.² That acknowledgement is tantamount, therefore, to an admission that the proffered position does not qualify as a specialty occupation position.

The petitioner has not established that our decision on the previous motion was incorrect based on the evidence of record at the time of that decision, and the motion to reconsider must also be dismissed.

² The various descriptions of the educational requirements of the proffered position raise other issues. For instance, the undated letter from the petitioner's CEO stated that the proffered position requires a bachelor's degree or the foreign equivalent in business administration, accounting, or hospitality. Even if business administration were a specific specialty, an educational requirement that could be satisfied by a degree in any subject in that array, business administration, accounting, and hospitality, would not be a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, as "business administration, accounting, and hospitality" would not delineate a specific specialty.

VI. 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.