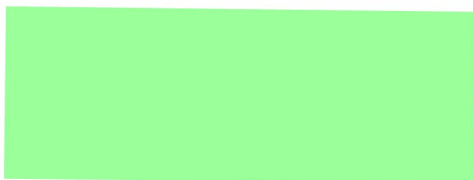


(b)(6)

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: **DEC 19 2014**

Office: VERMONT 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)

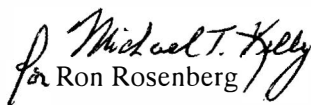
ON BEHALF OF PETITIONER: SELF-REPRESENTED

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,


for Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked the approval of the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal and a subsequent motion to reopen and reconsider. The AAO reopened the matter *sua sponte* and afforded the petitioner 30 days to supplement the record. The motion will be dismissed pursuant to 8 C.F.R. §§ 103.5(a)(1)(i), 103.5(a)(1)(iii)(C), 103.5(a)(2), 103.5(a)(3), and 103.5(a)(4).

I. PROCEDURAL BACKGROUND

The petitioner is a law firm specializing in immigration law.¹ Pursuant to the petition approval whose revocation is the subject of this petition, the beneficiary was classified as an H-1B temporary worker in a specialty occupation in accordance with 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), to perform services in a position to which the petitioner assigned the job title of Administrative Assistant.

After initiating revocation-on-notice proceedings in accordance with the provisions at 8 C.F.R. § 214.2(h)(11)(iii)(A), the director revoked the petition's approval on September 16, 2010. The director concluded that the approval must be revoked because the director determined that the evidence of record at the time when the approval was issued was insufficient to establish the proffered position as a specialty position, and that this aspect required revocation under 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), which requires revocation if "[t]he approval of the petition violated paragraph h [of 8 C.F.R. § 214.2] or involved gross error."

The petitioner filed an appeal which we subsequently dismissed. We affirmed the director's findings and noted an additional basis for revocation, namely, that the record of proceeding did not demonstrate that the beneficiary possessed a minimum of a bachelor's degree, or its equivalent, in a specific specialty. The petitioner subsequently filed a combined motion to reopen and reconsider, which was dismissed by our office. We reopened the matter *sua sponte*, and the petitioner's combined motion to reopen and reconsider is again before us.

II. MOTION REQUIREMENTS

The regulation at 8 C.F.R. § 103.5(a)(4) requires dismissal of motion that does not meet the regulatory requirements for that particular type of motion.

Before discussing the particular joint motion before us, we shall first review the requirements for its two components, namely (1) a motion to reopen the proceeding and (2) a motion for reconsideration of the decision that is the subject of the motion.

A. Overarching Requirement for Motions by a Petitioner

¹ The petitioner filed the petition as [REDACTED] but attests that it is "now known as [REDACTED]"

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

[T]he official having jurisdiction may, for proper cause shown, [a] reopen the proceeding or [b] 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), "[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 the following, in pertinent part:

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 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)(1)(i)(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

² The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, the following:

Every benefit request or other document 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.

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 id.* 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. THE SUBMISSIONS CONSTITUTING THIS JOINT MOTION

The submissions presented as the combined motion consists of a seven-page cover letter outlining the petitioner's basis for the joint motion, as well as the following documentary evidence:

1. Copy of the resume, academic credentials, and educational equivalency evaluation for the petitioner's employee, [REDACTED]
2. Copy of the resume for the petitioner's employee [REDACTED]
3. Copies of various documents pertaining to the petitioner's employee, [REDACTED] including her resume, academic credentials, educational equivalency evaluation, various certificates of achievement, W-2 forms, payroll records, and letters from former employers;

- 4. Copies of paystubs and W-2 form for the petitioner's employee, [redacted]
- 5. Copies of the petitioner's payroll records;
- 6. Internet Information on Administrative Assistants;
- 7. Details of Wage Levels;
- 8. Census report on Educational Attainment in Washington, D.C. metro area;
- 9. Pages from Fourth Edition of the Dictionary of Occupational Titles;
- 10. Copies of the petitioner's Labor Certification Application for 2004, 2006 and 2009; and
- 11. Copies of various documents pertaining to the beneficiary, including her resume, academic credentials, educational equivalency evaluation, various certificates of achievement, and W-2 forms.

The record before us at the time the appeal was dismissed contained claims by the petitioner that it previously employed specialty-degreed individuals in the proffered position, and therefore established that the proffered position qualified as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Specifically, the petitioner contended that it previously employed and/or continued to employ eight individuals in the proffered position of administrative assistant. In support of this contention, the petitioner provided the names and academic degrees of these eight individuals in chart form, which is set forth below:

Names of Current and Former Employees	Degree & Field (Undergraduate)	Degree & Field (Postgraduate)
[redacted]	B.A. in Theology	M.A. in English
	B.A. in History	Later obtained J.D. degree
	B.A. in Education	Later obtained M.A. degree in Education [redacted]
	B.A. equivalent based on 20 years of experience in Business	
	B.A. degree	M.A. degree in Theology [redacted]
		Ph.D. degree candidate [redacted]
	B.A. degree in Business	
	B.A. degree in Business and	M.A. degree in English

³ We cite here the petitioner's spelling of this individual's name. However, W-2 forms and pay stubs demonstrate that the individual's name is spelled [redacted] and we will use this spelling for the remainder of this decision.

Secretarial Science

B.A. degree in M.A. degree in Paralegal
(to be specified) Studies

However, we found the evidence submitted in support of this contention to be insufficient. Specifically, of the eight individuals identified above as occupying the position of administrative assistant, the petitioner only submitted evidence to corroborate its employment of [REDACTED] and [REDACTED]. Specifically, the petitioner submitted documentary evidence, in the form of pay stubs and W-2 forms, to demonstrate that these individuals worked for the petitioner at one point in time. No such evidence was provided pertinent to any of the other claimed employees and, further still, no corroborating evidence was provided pertinent to the degrees of any of the petitioner's former employees, either to show that they had such degrees, or the subject matter of those degrees.

Now on motion, the petitioner for the first time submits evidence of the academic achievements for [REDACTED] and [REDACTED] as well as evidence of the academic credentials of a third employee, [REDACTED]. The petitioner's submissions include copies of their resumes, academic credentials, and educational equivalency evaluations, various certificates of achievement, W-2 forms, payroll records, and letters from former employers.

While the evidence submitted may serve to substantiate the academic achievements of these three individuals, there is no indication or contention that such evidence was not previously available. Specifically, the documentation demonstrates that [REDACTED] degrees were conferred in 1973 and 1976, and [REDACTED] degrees were conferred in 2002 and 2005. [REDACTED] certificates of experience and other documentation demonstrate a span of close to twenty years, as contended by the petitioner. There is no explanation as to why this evidence was not previously submitted in support of the contentions made by the petitioner prior to revocation or on appeal.

Our review of this documentation demonstrates that these submissions are in support of facts and assertions of fact already presented in the record of proceeding. As such, they are not indicative of new facts to be presented if the proceeding were reopened. Moreover, the fact that the documentation may establish that [REDACTED] holds degrees in Theology and English, whereas [REDACTED] holds degrees in Education, would likewise not establish that the petitioner routinely recruited and hired for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty or group of closely related specialties, such that their majors or academic concentrations are not just in a distinct specialty (e.g., Theology, History, or Education) but in a specific specialty that equips the position-holder with a body of highly specialized knowledge without which the proffered position could not be performed. The disparate fields in which the employees cited by the petitioner have demonstrated their academic achievements do not

⁴ As noted in our prior decision, the record interchangeably this employee's last name as both [REDACTED] and [REDACTED]. Since the name is spelled [REDACTED] on the Form W-2 and payroll documents contained in the record, we will use that spelling when referring to this employee herein.

support the contention that the range of persons hired by the petitioner is indicative of a specialty-occupation position. .

The petitioner also introduces documentation pertaining to another employee not previously identified on the chart noted above. Specifically, the petitioner submits copies of pay stubs and W-2 forms for [REDACTED]. The documentation indicates that he earned \$40,000 with the petitioner in 2010, and that he was also employed by the petitioner for various periods in 2009 based on the pay stubs submitted. The petitioner claims that he was employed as a part-time administrative assistant and that he holds "an L.L.M. degree from a [REDACTED]". No further documentation to support this contention was submitted. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Although accompanied by evidence that the petitioner employed this individual in 2009 and 2010, the petitioner's statement on motion with regard to the nature of [REDACTED] employment is no more than an unsupported opinion. The absence of evidence to corroborate the claims of the petitioner renders the evidence pertaining to [REDACTED] of little to no probative value here.

We also note the submission by the petitioner of additional documentary evidence, such as payroll documentation, evidence on wage levels, and an excerpt from the Dictionary of Occupational Titles. This evidence neither constitutes "new facts" as contemplated by the regulations nor indicates that they would likely result in a more favorable result for the petitioner if the if the proceeding were reopened to consider them as new facts.

Additionally, we note the submission of a Census Report for the Washington D.C. area regarding the average level of education held by individuals in that particular geographic area. Although the petitioner contends that this evidence is relevant to demonstrate, essentially, that most individuals in the Washington D.C. area have achieved advanced degrees, thus requiring the employees of the petitioner to also be similarly educated to be on equal ground with the petitioner's clients, is not probative to the issue here, which is whether the petitioner established that the proffered position of administrative assistant qualifies as a specialty occupation.

The petitioner also submitted prior LCAs for the proffered position, noting that the wage level and corresponding level of responsibility changed over the years and thus establishes that the proffered position is a specialty occupation. The LCA information from prior years is not relevant here, nor does their submission constitute the submission of new facts for consideration on motion.

Finally, the petitioner resubmits various documents pertaining to the beneficiary, including her academic credentials, educational equivalency evaluation, certificates of achievement, and W-2 forms, apparently to address the beneficiary-qualifications component of our May 17, 2013 decision. The petitioner, however, resubmits the documentation previously included in the record with regard

to the beneficiary's qualifications. Again, the petitioner submits an evaluation dated March 2, 2004 as well as another evaluation dated July 23, 2010.

As noted in our May 17, 2013 decision, the March 2, 2004 evaluation states that, based on a Duplicate Mark Sheet from [REDACTED] (formerly [REDACTED]) the beneficiary had passed the Master of Arts II English Examination, and that this accomplishment is equivalent to one year of university-level credit from an accredited college or university in the United States.

Yet further, that evaluation states that, based on two Statements of Marks from [REDACTED] (formerly [REDACTED]) in [REDACTED], the beneficiary had passed the Master of Arts Part I examination and the Master of Arts (Final) examination. The evaluation also states that these accomplishments are equivalent to a master's degree in English from an accredited college or university in the United States.

The July 23, 2010 evaluation states, in contrast to the March 2, 2004 evaluation, that based on a Duplicate Mark Sheet from [REDACTED] (formerly [REDACTED]), the beneficiary had passed the Master of Arts II English Examination in 2001, and that this accomplishment is equivalent to a master's degree in English from an accredited college or university in the United States. This evaluation also states that based on the two Statements of Marks from [REDACTED] (formerly [REDACTED]) in [REDACTED] the beneficiary passed the Master of Arts Part I examination and the Master of Arts (Final) examination, and that this is equivalent to a master's degree English from an accredited college or university in the United States.

Although the petitioner submits for the first time on motion a copy of the Statements of Marks, it is noted that these documents were issued in 2001 and 2002, respectively. There is no indication that they were not previously available, nor is there any explanation with regard to why they are only just now being submitted on motion. Moreover, the petitioner does not submit the Duplicate Mark Sheet. Regardless, these documents were previously available and cannot be considered "new facts" before us here on motion.

Finally, we address the petitioner's seven-page letter, noting specifically that it neither argues nor cites any specific statute, regulation, precedent decision, let alone any that would be relevant to determining whether the AAO misapplied any law, regulation, precedent decision, or Service policy to the evidence of record at the time we rendered our decision. This aspect of the petitioner's submission further undermines its evidentiary value for the motion-to-reconsider component of this joint motion. This document, therefore, does not merit any probative weight towards satisfying the requirements of either a motion to reopen or a motion to reconsider.

IV. DISMISSAL OF THE MOTION TO REOPEN

The record of proceeding does not support findings that the motion both (1) states facts that are new, that is, not previously demonstrable or not previously discoverable, and also (2) indicates that

reopening the proceeding for consideration of the petitioner's evidence of those facts would likely result in a more favorable decision on the petition. Specifically, there is no indication that any of the factual claims submitted for the first time on this motion could not have been submitted prior to the director's decision on the merits; and the motion does not establish that any such facts are of such evidentiary weight and consequence that reopening the proceeding to consider them would likely change the result in this case.

Further, even if the documents only now presented for the first time were viewed – mistakenly – as presenting "new facts," their content would not merit the reopening of the proceeding, either. As noted above, in addition to satisfying the minimum requirements at 8 C.F.R. § 103.5(a)(2), the petitioner must also establish that the new facts to be proven in a motion to reopen possess such significance that they would likely change the results of the case. *Matter of Coelho*, 20 I&N Dec. at 473; *see also Maatougui v. Holder*, 738 F.3d at 1239-40. Such is not the case here. The motion does not establish why, if we considered the contents of the newly submitted documents in a reopened proceeding, they would likely change the outcome of our previous adjudication of the appeal.

"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 and counsel have not met that burden.

As the documents submitted do not satisfy the requirements of a motion to reopen, the motion to reopen will therefore be dismissed.

V. DISMISSAL OF THE MOTION TO RECONSIDER

Nor does the evidence submitted by the petitioner on motion meet the requirements of a motion to reconsider. As noted, 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); Instructions for Motions to Reconsider at Part 3 of the Form I-290B.

As a preliminary matter, it is noted that even if we agreed with the arguments made by the petitioner in its brief, the petition would still not be approvable, because the petitioner does not address, let alone resolve, the numerous evidentiary issues we discussed at length in our May 17, 2013 decision. The petitioner does not address those portions of our decision, articulate any error in them, or cite to

any pertinent statutes, regulations, and/or precedent decisions to establish that those portions of our decision were based on an incorrect application of law or USCIS policy to the evidentiary record that was before us at the time of our decision to dismiss the appeal.

With regard to the specialty occupation issue, the petitioner simply discusses the educational backgrounds of its prior administrative assistants. The petitioner does not contend that our finding with regard to the specialty occupation issue, and in particular the third prong of 8 C.F.R. § 8 C.F.R. § 103.5(a)(1)(i)(3)214.2(h)(4)(iii)(A) where we review the petitioner's hiring history, was erroneous. The petitioner does not address that discussion, articulate any error in that discussion, or cite to any pertinent statutes, regulations, and/or precedent decisions to establish that the specialty occupation portion of our decision was based on an incorrect application of law or USCIS policy to the record of proceeding that was before us at the time of our decision.

With regard to the beneficiary-qualifications issue, we again note that at the time our decision was rendered, there was no evidence of the examinations at [REDACTED] or [REDACTED] upon which the educational evaluations of the beneficiary's academic credentials were based. The petitioner does not contend that our finding with regard to the qualifications issue was erroneous. The petitioner does not address that discussion, articulate any error in that discussion, or cite to any pertinent statutes, regulations, and/or precedent decisions to establish that the qualifications portion of our decision was based on an incorrect application of law or USCIS policy to "the evidence of record" at the time of our decision, as required by the regulation at 8 C.F.R. § 103.5(a)(1)(i)(3).

As discussed above, the petitioner does not address each portion of our May 17, 2013 decision. Nor do we find persuasive any of the contentions it makes, albeit in generalized terms, with regard to those portions of our decision that the petitioner does elect to address on motion. Furthermore, none of the petitioner's arguments are supported by any pertinent statutes, regulations, and/or precedent decisions to establish that our May 17, 2013 decision was based on an incorrect application of law or USCIS policy. The motion to reconsider must therefore be dismissed in accordance with 8 C.F.R. § 103.5(a)(4) as it fails to meet the applicable requirements.

VI. FAILURE TO MEET APPLICABLE REQUIREMENTS

Furthermore, the motion shall be dismissed for failing to meet an applicable requirement. The regulation at 8 C.F.R. §§ 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions 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." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Again, the regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

VII. CONCLUSION AND ORDER

The documents presented as the combined motion to reopen and reconsider do not satisfy the requirements of either a motion to reopen or a motion to reconsider. However, even if we overlooked that factor and considered the merits of the submitted documents and the arguments made therein, they would still fail to establish error in our May 17, 2013 decision. The combined motion to reopen and reconsider will therefore be dismissed, and our May 17, 2013 decision will be affirmed.

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. Our decision dated May 17, 2013 is affirmed.