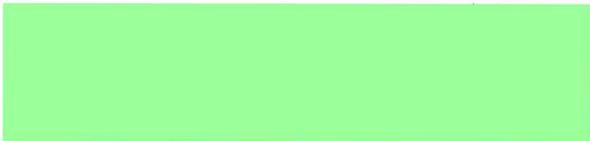
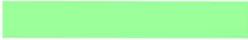




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUL 16 2013** OFFICE: CALIFORNIA 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:  


INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. Please note that all documents have been returned to the office that originally decided your case. Please also note that any further inquiry must be made to that office.

Thank you,  
  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The petitioner submitted a Form I-129 (Petition for a Nonimmigrant Worker) to California Service Center on April 14, 2009. On the Form I-129 visa petition, the petitioner describes itself as a manufacturer and distributor of hair care products established in 1995. In order to continue to employ the beneficiary in what it designates as a purchasing manager position, the petitioner seeks to classify the beneficiary 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. Counsel for the petitioner submitted an appeal. The AAO dismissed the appeal. Counsel filed a combined motion to reopen and reconsider. The AAO dismissed the combined motion. Thereafter, counsel for the petitioner submitted another motion to reopen and reconsider.

The petitioner through counsel submitted the following documents with this motion: (1) the Form I-290B; (2) counsel's brief for the motion; (3) a copy of the AAO decision dated November 21, 2012; (4) a letter from the petitioner dated December 20, 2012; (5) a copy of the petitioner's Form 1120S, U.S. Income Tax Return for an S Corporation for 2011; (6) a copy of the section on "Purchasing Managers, Buyers, and Purchasing Agents" from the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2012-2013 Edition; (7) a copy of the opinion and order for *Residential Finance Corporation v. U.S. Citizenship and Immigration Services (USCIS)*, posted on May 31, 2012 at AILA Infonet, Doc. No. 12053155; and (8) a copy of a previously submitted evaluation of education, training, and experience for the beneficiary from Professor [REDACTED] University. In addition, subsequent to filing this motion on December 24, 2012, counsel supplemented the record on February 19, 2013, by submitting a letter from Professor [REDACTED] who is the associate dean and director of graduate programs at [REDACTED]. The AAO reviewed the record in its entirety before issuing its decision.<sup>1</sup>

Upon review, the AAO finds that the evidence submitted with this motion fails to overcome the basis of the director's denial that the proffered position does not qualify as a specialty occupation. Accordingly, the director's decision will not be disturbed. The motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>2</sup> The new facts

<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>2</sup> The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered,

submitted on motion must be material and previously unavailable, and could not have been discovered earlier in the proceeding. *Cf.* 8 C.F.R. § 1003.23(b)(3).

Furthermore, 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and 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.

On this motion, counsel indicated that the AAO's "denial decision states that the [*Handbook*] fails to indicate the purchasing manager positions as a category require a minimum of a bachelor's degree or the equivalent in a specific specialty." Counsel submits a new version of the *Handbook*, 2012-2013 Edition, and asserts that the "[*Handbook*] [now] indicates that purchasing manager[s] usually have at least a bachelor's degree." Counsel also indicated that the *Handbook* also states "*many manufacturing firms* put an even greater emphasis on formal training, preferring applicants who have a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences." (emphasis in the original).

Counsel provided the following excerpt from the subchapter of the *Handbook* entitled "How to Become a Purchasing Manager, Buyer and Purchasing Agent":

Buyers and purchasing agents need a high school diploma and on-the-job training. Purchasing managers need a bachelor's degree and work experience as a buyer or purchasing agent.

**Education**

Educational requirements usually vary with the size of the organization. A high school diploma is enough at many organizations for entry into the purchasing agent occupation, although large stores and distributors may prefer applicants who have completed a bachelor's degree program and have taken some business or accounting classes. Many manufacturing firms put an even greater emphasis on formal training, preferring applicants who have a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences.

Purchasing managers usually have at least a bachelor's degree and some work experience in the field. A master's degree may be required for advancement to some top-level purchasing manager jobs.

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found, or learned <new evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Purchasing Managers, Buyers and Purchasing Agents, on the Internet at <http://www.bls.gov/ooh/business-and-financial/purchasing-managers-buyers-and-purchasing-agents.htm#tab-4> (last visited July 10, 2013).

While this evidence may have not been previously available and could not have been discoverable in the previous motion to reopen and reconsider, the AAO finds that this evidence is not material since it fails to overcome the basis of the director's denial. Specifically, contrary to counsel's contention, the *Handbook* does not support a finding that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.<sup>3</sup> Section 214(i)(1)(B) of the Act (emphasis added).

Here, although the *Handbook* indicates that "purchasing managers usually have at least a bachelor's degree," the *Handbook* does not state that entry into the occupation normally requires a minimum of a baccalaureate (or higher degree) in a *specific specialty* directly related to the duties and responsibilities of the position. Instead, the *Handbook* states "many manufacturing firms put an even greater emphasis on formal training, *preferring* applicants who have a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences." (emphasis added). Notably, the *Handbook* lists degrees in disparate fields (i.e., engineering, business, economics or one of the applied sciences). Absent evidence to the contrary, these fields are not closely related specialties. Further, it states that many manufacturing firms *prefer* such applicants, but does not indicate that the firms require such degrees. Accordingly, as such evidence fails to establish that normally the minimum requirement for entry into the occupation is at least a bachelor's degree *in a specific specialty* or its equivalent, the new version of the *Handbook* fails to support the assertion that the proffered position qualifies as a specialty occupation.

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<sup>3</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Counsel asserts that "the requirement that the degree must be in a specific academic major or have a specific title in H-1B occupation has recently been explicitly rejected by a United States District Court." Counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), to claim that "what is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."<sup>4</sup>

The AAO agrees with the proposition that "what is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge." However, in this matter, the petitioner failed to demonstrate that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge. The fact that a person may be employed in a position designated as that of a purchasing manager and may apply related principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that its particular position would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in a specific specialty. As previously discussed, in general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.<sup>5</sup> The AAO

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<sup>4</sup> Counsel provided a copy of the opinion and order for *Residential Finance Corporation v. USCIS*, Case No. 2:12-cv-00008 (U.S.D.C., S.D. Ohio, March 12, 2012), posted on the AILA Infonet, Doc. No. 12053155. However, the AAO notes that this copy of the opinion and order is irrelevant to this proceeding as it deals with the attorney's fees.

<sup>5</sup> It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the

also notes that, 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 in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

The AAO notes that counsel also claims that "the petitioner is not requiring a bachelor's degree in business administration but rather requires a bachelor's degree in business administration with a concentration in management." In support of this assertion, counsel refers to the previously submitted copy of work experience/training evaluation by Assistant Professor [REDACTED] which states that the beneficiary's work experience is equivalent of a bachelor's degree in Business Administration with a concentration of Management. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. Further, the AAO finds that the evidence in the record does not support counsel's statements. As previously mentioned in the AAO's decision dated November 1, 2011, while the petitioner claimed to have hired a purchasing manager with a bachelor's degree and submitted a resume and payroll records for Mr. [REDACTED] and further claimed that "Mr. [REDACTED]'s bachelor's degree 'in an unrelated field' and his work experience is equivalent of [sic] a bachelor's degree in management, no evidence in the record of proceeding corroborates such a claim." The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

In addition, the AAO notes that counsel supplemented its record on motion to support its assertion that the beneficiary's work experience is equivalent to a bachelor of business administration degree with concentration in management. Specifically, counsel submitted a letter from Professor [REDACTED] dated January 25, 2012, stating that Professor [REDACTED], who provided an evaluation of the beneficiary's education, experience and training, "can make recommendations regarding the granting of college-level credit for experience." The AAO notes that this is not new evidence since this was previously available and was discoverable. More importantly, the AAO notes that the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

Motions for the reopening or reconsideration 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. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party

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same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.

seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden.

Finally, the motion shall also be dismissed for failing to meet another applicable filing requirement. The regulation at 8 C.F.R. § 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). 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 requirement listed at 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

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

Finally, it should be noted for the record 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).

**ORDER:** The motion is dismissed. The previous decision of the AAO, dated November 21, 2012, is affirmed. The petition is denied.