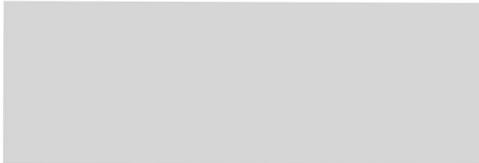


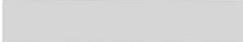


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 03 2015**

OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE:

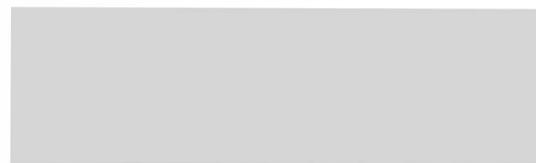
Petitioner:

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:

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. The petitioner filed an appeal to the Administrative Appeals Office (AAO), and we dismissed the appeal. The matter is again before us on a combined motion to reopen and motion to reconsider. The combined motion will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Software Development/Consulting" firm. In order to employ the beneficiary in what it designates as a systems analyst 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 submitted an appeal of the director's decision to the AAO. We reviewed the record of proceeding and determined it did not contain sufficient evidence to establish that the petitioner would employ the beneficiary in a specialty occupation position. Accordingly, we dismissed the appeal in a decision issued on August 5, 2014. In this decision, we also properly gave notice to the petitioner that any motion must be filed within 33 days of the date of the decision.

On motion, the petitioner asserts that the proffered position qualifies as a specialty occupation, and that it meets all four of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4). To support the motion, the petitioner submits additional evidence which will be discussed in greater detail below.

I. MOTION REQUIREMENTS

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

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),

"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 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: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).

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.

¹ 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.

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.

II. ANALYSIS

A. Dismissal of the Motion to Reopen

In support of the motion, the petitioner submits several documents, including the following: (1) excerpts from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* chapter on "Computer Systems Analysts"; (2) a print-out of the Occupational Information Network (O*NET) OnLine Summary Report for the occupation "Computer Systems Analysts"; (3) copy of a USCIS memorandum dated July 11, 2014; (4) copies of several vacancy announcements posted by the petitioner and other companies; (5) a list of the petitioner's employees who have job titles of "Systems Analyst," their current immigration statuses, and degrees; and (6) evidence of these individuals' degrees and employment. The petitioner also submits "new" explanations of the duties of the proffered position and the knowledge required to perform them. The petitioner asserts that this newly submitted evidence establishes the proffered position as a specialty occupation under the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

We preliminarily note that the petitioner has not explained why the newly submitted evidence presents "new facts" that were not previously unavailable and could not have been submitted with the initial petition, in response to the RFE, or with the appeal.

Upon review of the evidence, we observe that five out of the six items listed above existed and were known to the petitioner before the H-1B petition was filed. For example, while the job advertisements may have been posted on Internet sites close to the time that the combined motion was filed, the petitioner had the opportunity to submit job advertisements with its petition, in response to the RFE, and with its appeal; however, it did not do so. Therefore, although these

documents are submitted for the first time on motion, they cannot be considered "new" as they were previously available to the petitioner.

While the petitioner provides a copy of a USCIS memorandum dated July 11, 2014 to support the proposition that "[o]ther authoritative and/or persuasive sources provided by the petitioner will also be considered," the petitioner has not provided any other authoritative and/or persuasive sources to be considered.

Even if the documents submitted on motion were viewed as "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. It is not apparent that if we considered the contents of these documents in a reopened proceeding, they would likely change the outcome of our adjudication.

The petitioner submits the excerpts from the *Handbook* and the O*NET Summary Report for Computer Systems Analysts positions as evidence under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In particular, the petitioner highlights the statement in the *Handbook* that "a bachelor's degree in a computer or information science field is common." However, the statement that certain degrees are "common" does not establish that these degrees are the normal, minimum "requirement" for entry into the particular position, as required under the plain language of the criterion. In fact, the same excerpt goes on to state that "[a]lthough many computer systems analysts have technical degrees, such a degree is not always a requirement" and that "[m]any analysts have liberal arts degrees and have gained programming or technical expertise elsewhere." Thus, we cannot find that the *Handbook* supports the petitioner's eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner attempts to explain the statement in the *Handbook* that "[m]any analysts have liberal arts degrees and have gained programming or technical expertise elsewhere" by claiming that there are "two separate and distinct categories – **technical or functional**" within the Computer Systems Analysts occupational classification, and that the *Handbook's* statement only applies to the "functional" systems analysts. The petitioner then asserts that the proffered position is a "technical" systems analyst position as opposed to a "functional" systems analyst. However, the petitioner has not submitted any evidence to support this assertion. Notably, the *Handbook* does not distinguish between "technical" or "functional" analysts, as the petitioner claims.²

² The *Handbook* does state that while "[m]any computer systems analysts are general-purpose analysts," there are also "some specialized systems analysts." However, the *Handbook* does not specifically list "technical" systems analysts or "functional" systems analysts as types of specialized systems analysts. Moreover, the

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)).

The petitioner refers to O*NET's assignment of a Job Zone Four and a Specific Vocational Preparation (SVP) rating of 7.0 to < 8.0 to the proffered position. However, we find that O*NET does not establish that the proffered position qualifies as a specialty occupation under the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). In general, O*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a standard entry requirement for a given position. Job Zone designations make no mention of the specific field of study from which a degree must come. We interpret the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). Furthermore, the SVP ratings are meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP ratings do not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, we cannot find that O*NET supports the petitioner's eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), either.

Again, while the petitioner provides a copy of a USCIS memorandum dated July 11, 2014 to support the proposition that "[o]ther authoritative and/or persuasive sources provided by the petitioner will also be considered," the petitioner has not provided any other authoritative and/or persuasive sources to be considered. As such, the evidence of record fails to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner submits several vacancy announcements as evidence under the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

However, the petitioner has not established that these vacancy announcements were placed by organizations in the petitioner's industry. We note that some of the announcements were placed by companies in the banking, staffing, and healthcare industries, as well as by a city government. Other announcements did not define the posting organization's industry. Moreover, the petitioner has not submitted any evidence to establish that it is similar to these organizations, in that it shares

Handbook does not differentiate the minimum educational requirements for each particular specialized analyst position.

the same general characteristics with the advertising organizations.³ Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner and in the petitioner's industry. It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

The petitioner has also not shown that these vacant positions are parallel to the proffered position. Almost all of the vacancies were for senior-level positions or otherwise required several years of relevant experience. In contrast, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I systems analyst positions, entry-level positions requiring only a basic understanding of such positions, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which is not supported by the *Handbook*.

The petitioner has not submitted any new facts relevant to the second of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner submits its own vacancy announcements and documentation regarding its past employment practices as evidence under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Regarding the petitioner's vacancy announcements, several of them were partially or wholly illegible.⁴ Of the legible announcements, all but two of them were for senior-level positions. We hereby reiterate our earlier discussion of the petitioner's designation of the proffered position as a Level I position on the LCA, indicating that it is an entry-level position.

Of the petitioner's two legible, non-senior level vacancy announcements for Systems Analysts positions, the petitioner has not established how they are representative of its recruiting history for the

³ When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered).

⁴ We note that many of the advertisements printed from the petitioner's own website were illegible with respect to the job title, job ID, location, and rate of pay, although the rest of the information regarding the candidate requirements was legible.

particular position.⁵ Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Moreover, these two announcements state the minimum educational requirement of a "B.S. degree (or foreign equivalent) in Computer Science, an Engineering discipline or a closely related field." As we stated in our August 5, 2014 decision, and as we will discuss in greater detail *infra*, the petitioner's acceptance of a bachelor's degree in "an Engineering discipline" indicates that the proffered position does not qualify as a specialty occupation.

The petitioner submitted a list of its employees who have job titles of "Systems Analyst," along with evidence of their employment and degrees. First, we note that only three of the fifteen listed individuals also appear on the petitioner's organizational chart. Likewise, the petitioner's organizational chart depicts ten other individuals who also have the job titles of "Systems Analyst," for whom the petitioner has not provided evidence of their educational credentials and employment. As such, it is not clear how representative these listed employees are of the petitioner's actual employment practices.

Notwithstanding the above, the petitioner has not established that all of the listed individuals are employed in the same position as the proffered position in order to be relevant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which pertains to the employer's normal requirements for "the proffered position." That is, while these individuals may have identical job titles, the petitioner has not submitted any evidence of the actual job duties for these individuals to establish the substantive nature of their positions.

To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally* *Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the

⁵ The petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

minimum for entry into the occupation as required by section 214(i)(1) of the Act. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. If USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.*

Finally, the petitioner provides a "new" statement describing the beneficiary's job duties and the knowledge required to perform them under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

In the petitioner's "new" statement, the petitioner reiterates the same job duties as previously provided for the record. The petitioner does not provide any new details or clarification about the proffered duties. This reiteration of the same job duties does not present new facts, as required for a motion to reopen.

Further, the petitioner has not explained how these same job duties would change the outcome of this case if the proceeding were reopened to consider them. In our August 5, 2014 decision we explained that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position, as the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of systems analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. As stated above, the petitioner has not provided any additional detail or clarification about the proffered duties.

The petitioner does, however, provide a new explanation of the knowledge required to perform the proffered duties. In particular, the petitioner explains that the duties of the proffered position require a bachelor's degree in "Computer Science or Engineering/Technology" because such a degree "will require satisfactory course work in the core areas of software development, software engineering, code correction and test programs." The petitioner further explains that this position "requires highly technical skills in PC environments and also requires implementing new computer systems and online technology. The incumbent must be able to show up at the work site and hit the ground running. S/he must be able to enter our work site, immediately assess the situation and begin to develop application software as a technical solution to the identified problem."

We find the petitioner's new explanations unpersuasive. The petitioner has not explained how any and all disciplines within the general engineering field, such as civil engineering and petroleum engineering, would necessarily encompass "core areas of software development, software engineering, code correction and test programs," as now claimed. In addition, the petitioner's

statements that the position requires "highly technical skills in PC environments," "implementing new computer systems and online technology," and the ability to "hit the ground running" are too vague to sufficiently describe the proffered position and distinguished it as more specialized and complex than other systems analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

For all of the reasons discussed above, the newly submitted evidence does not satisfy the requirements of a motion to reopen. The petitioner has not submitted any other new facts in support of its motion to reopen. The motion to reopen will therefore be dismissed.

"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) (requirements for a motion to reconsider); Instructions for Motions to Reconsider at Part 3 of the Form I-290B.

Although not articulated, it appears the petitioner is contesting our August 5, 2014 conclusion that the petitioner's acceptance of an undifferentiated bachelor's degree in engineering indicates that the proffered position is not a specialty occupation. Specifically, in support of the motion to reconsider, the petitioner states that "[w]hile it is true that there is not one single degree required for this position, the degrees that are accepted are all related in that mathematics is a core component of all of them. One could not perform the duties of this profession without education in a mathematically based field." The petitioner concludes that "[a]s with Computer Systems Analysts, the degrees required for Engineers all have mathematics as a core component." To support these assertions, the petitioner cites the *Handbook* as stating for Engineers: "A bachelor's degree in engineering is required for almost all entry-level engineering jobs. College graduates with a degree in natural science or mathematics occasionally may qualify for some engineering jobs." The petitioner also claims that the *Handbook* states that Systems Analysts "need to know math so that they can solve problems."

The petitioner's assertions are unpersuasive. The petitioner did not provide sufficient credible evidence to corroborate its claim that mathematics is a "core component" of all engineering

disciplines, and is thus related to the proffered position. We fail to see how the *Handbook's* statement that a college graduate with a degree in mathematics "occasionally may qualify for some engineering jobs" supports the petitioner's assertion that mathematics is a "core component" of all engineering disciplines. Further, despite the petitioner's claim that the *Handbook* states that Systems Analysts "need to know math so that they can solve problems," we could not find this statement anywhere in the provided excerpts. Again, 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. at 165.

Even assuming *arguendo* that all engineering disciplines are related to the proffered position through the basic principles of mathematics, a mere relationship, alone, is insufficient. Rather, the petitioner must show a close and direct correlation between all engineering disciplines and the proffered position, i.e., that each and every engineering discipline offers a precise and specific course of study that relates directly and closely to the position in question. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). The petitioner has not done so in this case. The petitioner's assertions on motion, therefore, fail to establish that our decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner has not specifically stated any other reasons for reconsideration. Accordingly, the motion to reconsider must be dismissed. 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.

III. CONCLUSION AND ORDER

The documents and arguments 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 August 5, 2014 decision. The combined motion will therefore be dismissed, and our August 5, 2014 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.

ORDER: The combined motion is dismissed.