



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF U-B-S-, INC.

DATE: DEC. 1, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an information technology consulting company, seeks to employ the Beneficiary as a programmer analyst and to extend her classification as a nonimmigrant worker in a specialty occupation. See 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, California Service Center, denied the nonimmigrant visa petition and denied a subsequent combined motion to reopen and motion to reconsider. The matter is now before us on appeal. The appeal will be dismissed.

I. PROCEDURAL AND FACTUAL BACKGROUND

The Director denied the petition, concluding that the evidence of record did not establish that the Beneficiary qualifies to perform the duties of a specialty occupation position. The Petitioner filed a combined motion to reopen and motion to reconsider, which was denied by the Director on October 17, 2014.

It is noted that the Director stated: "If you desire to appeal *this* decision, you may do so." (Emphasis added.) Where, as here, an appeal is filed in response to a Director's unfavorable action on a motion, the scope of the appeal is limited to the Director's decision on that motion. We see, for instance, that the regulatory provision at 8 C.F.R. § 103.3(a)(2)(i) states: "The affected party must submit the complete appeal including any supporting brief as indicated in the applicable form instructions *within 30 days after service of the decision.*" (Emphasis added). Thus, if the Petitioner wished to appeal the Director's decision to deny the decision, it should have elected to file that appeal within 30 days of the Director's denial decision. Here, however, the Petitioner elected to file a combined motion instead and, thereby, limited the scope of the appeal to the merits of the Director's decision to deny that motion.

We have focused our review and analysis upon determining whether - based upon the record of proceeding at the time the Director decided to deny the petition - the Director's decision to deny the motion to reopen and motion to reconsider was correct.

II. MOTION REQUIREMENTS

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a USCIS officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action: [T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the Petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), *Processing motions in proceedings before the Service*, "[a] motion that does not meet applicable requirements shall be dismissed."

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), *Requirements for motion to reopen*, states 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 4 of the Form I-290B, which states:

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence that establish eligibility at the time the underlying petition or application was filed.¹

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).

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 . . . and such instructions are incorporated into the regulations requiring its submission."

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 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 4 of the Form I-290B, which states:

Motion to Reconsider: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions and must establish that the decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence of record at the time of decision.

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. ANALYSIS

As we will discuss below, we find that the Director’s decision to deny the combined motion was correct. Accordingly, the appeal will be dismissed.

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A. Motion to Reopen

As noted above, 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.²

On motion, the Petitioner submitted a brief and letters evaluating the Beneficiary's qualifications from [REDACTED], a professor at [REDACTED] and [REDACTED] a professor at [REDACTED]

We agree that the letters from [REDACTED] and [REDACTED] were not "new" and that they therefore did not meet the motion to reopen requirements. Both [REDACTED] and [REDACTED] submissions on motion post-dated the decision that was the subject of the motion, and accordingly, the Director properly discounted them as evidence regarding the merits of the petition.

However, even if these letters had been "new," they still would not have changed the outcome of the case. Both authors concluded that based upon her combined education and experience, the Beneficiary has attained the equivalent of a "**Bachelor of Pharmacy with a Concentration in Computer Information Systems** from an accredited institution of higher education in the United States." (Emphasis in originals.) With regard to the Beneficiary's work experience, the authors did not discuss which experience letters they had reviewed and simply listed the Beneficiary's duties and the period of employment. They did not provide insight into how they had determined that the Beneficiary had served in "progressively sophisticated and responsible positions."

We note that the record contains a letter from [REDACTED] dated April 1, 2014. The letter indicates that the Beneficiary was employed as a computer system analyst/business analyst from December 3, 2012 to March 31, 2013. The letter lists the Beneficiary's duties in bullet points and describes them in relatively abstract and generalized terms. For example, the duties include "[p]repared documentation on the projects worked," "provided operational support," and "configured and deployed the application services." In other words, while the letter generally describes the Beneficiary's position and her duties, it does not establish the substantive nature and knowledge required to perform the duties of the proffered position. Further, the letter does not demonstrate that the Beneficiary has achieved progressively responsible position that would indicate recognition of expertise in the pertinent specialty under 8 C.F.R. § 214.2(H)(4)(iii)(C)(4).

The evidence of record does not support the authors' conclusion regarding whatever degree-equivalency the Beneficiary may have attained through her experience.⁴ Therefore, the evaluations

² See 8 C.F.R. § 103.5(a)(2).

³ On Motion, the Petitioner also included the previously submitted educational credentials evaluation by [REDACTED] and an experience letter from [REDACTED]

⁴ Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded

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submitted by [REDACTED] and [REDACTED] are not probative evidence toward demonstrating that the Beneficiary possesses a foreign equivalent of a U.S. degree of Bachelor of Pharmacy with a Concentration in Computer Information Systems. Thus, even if these evaluations *had* constituted new evidence, they still would not have established any error in the Director's initial decision denying the petition.

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* at 473; *see also Maatougui v. Holder* at 1239-40. Such is not the case here.

“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. The Director correctly decided that the Petitioner did not meet that burden, and the Petitioner's submission establishes no error in that portion of the Director's October 17, 2014, decision denying the motion to reopen.

B. Motion to Reconsider

We find that the Petitioner's submissions on motion did not meet the requirements of a motion to reconsider. Our review of the record and the adverse decision indicates that the Director properly applied the statute and regulations to the Petitioner's case. On motion, the Petitioner did not specifically and sufficiently articulate why the Director's July 19, 2014, decision denying the petition was based on an incorrect application of law or USCIS policy; nor did the Petitioner cite to any relevant statute, regulation or relevant precedent decision that would support a contention that the Director's decision to deny the petition was based upon a misapplication of statute, regulation, or policy to the evidence of record before the Director at the time of the decision to deny the petition. On motion, the Petitioner submitted the two expert evaluation letters discussed above for consideration regarding the Beneficiary's qualification rather than explaining how the Director's adverse decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence of record before the Director *at the time of the decision*.

simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the Petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Again, 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) and the instructions for motions to reconsider at Part 4 of the Form I-290B.

We find that the Director did not err in denying the motion for reconsideration, as the documents constituting that motion for reconsideration did not articulate how the Director's decision to deny the petition misapplied any particular pertinent statutes, regulations, policies or precedent decisions to the evidence of record that was before the Director when the Director rendered the decision to deny the petition.

IV. CONCLUSION AND ORDER

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 appeal will be dismissed.⁵

ORDER: The appeal is dismissed.

Cite as *Matter of U-B-S-, Inc.*, ID# 12589 (AAO Dec. 1, 2015)

⁵ As we limited the scope of the appeal to the merits of the Director's decision to deny that motion, we will not address and will instead reserve our determination on the additional issues and deficiencies that we observe in the record of proceeding with regard to the approval of the H-1B petition.