



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

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

MATTER OF F-C-U-, INC.

DATE: DEC. 9, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a university, seeks to temporarily employ the Beneficiary as a “Market Research Analyst” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The Petitioner appealed the denial to the Administrative Appeals Office (AAO), which we dismissed. The matter is now before us on a motion to reconsider. The motion will be denied.

We dismissed the appeal, concluding that the evidence of record was inadequate to establish that the proffered position qualifies as a specialty occupation. On motion, the Petitioner asserts our decision was erroneous on two primary grounds: (1) that we did not follow the legal framework pertaining to extension petitions; and (2) that we erred in concluding that the proffered position does not qualify as a specialty occupation.¹

I. 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 U.S. Citizenship and Immigration Services (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

¹ It is noted that the Petitioner did not address our additional finding in our May 1, 2015, decision pertaining to the Beneficiary’s qualifications. In our decision, we also concluded that the Petitioner did not demonstrate that the Beneficiary is qualified to perform the duties of a specialty occupation. Because the Petitioner did not raise that issue on motion, we will not address it in this decision, except to note that we affirm our prior finding and denial of the petition on that basis.

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 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 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 when filed 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* 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. DISCUSSION

For the reasons discussed below, the motion to reconsider will be denied.

The Petitioner’s motion does not satisfy the requirements of a 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 must 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 4 of the Form I-290B.

Here, the Petitioner's stated reasons for reconsideration are insufficient to establish that our decision was incorrect.

First, the Petitioner contends that we erred by not following the legal framework pertaining to extension petitions. The Petitioner relies upon the April 23, 2004, memorandum authored by William R. Yates (Yates memo), as well as other sources providing guidance on the same memo, as establishing that USCIS must give deference to prior approvals or provide detailed explanations why deference is not warranted. Memorandum from William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3 (Apr. 23, 2004).

The Petitioner's assertions on this point are unpersuasive. In pertinent part, the Yates memo states the following:

... Adjudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International*, 19 I&N 593, 597 (Comm. 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. See 8 C.F.R. § 103.8(d).

....

... Material error, changed circumstances, or new material information must be clearly articulated in the resulting request for evidence or decision denying the benefit sought, as appropriate.

The Yates memo does not advise adjudicators to approve an extension petition when the facts of the record do not demonstrate eligibility for the benefit sought. On the contrary, the memorandum's language quoted immediately above acknowledges that a petition should not be approved where, as here, the Petitioner has not demonstrated that the petition should be granted.

As indicated in the Yates memo, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). If the previous nonimmigrant petition was approved based on the same description of duties and

assertions that are contained in the current record, it would constitute material and gross error on the part of the Director. It would be “absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent.” *Sussex Eng’g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). A prior approval does not compel the approval of a subsequent petition or relieve the Petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Tex. A&M Univ. v. Upchurch*, 99 F. App’x. 556 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, we would not be bound to follow the contradictory decision of a service center. *See La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

Further, the memorandum clearly states that each matter must be decided according to the evidence of record. In the appeal, the Petitioner asserts that “the records show that [the] Petitioner is the same as in the previous petition without any changes, the positions of Market Research Analyst and associated job duties are identical to the previous petition, the supporting documentation as well, and there were no new information at stake.” A copy of this prior petition, however, was not included in the record. If a petitioner wishes to have prior decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself and/or received in response to a Freedom of Information Act request filed in accordance with the applicable regulations. Otherwise, “[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility.” 8 C.F.R. § 103.2(b)(2)(i).

When “any person makes application for a visa or any other document required for entry, or makes application for admission, . . . the burden of proof shall be upon such person to establish that he is eligible” for such benefit. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972). Each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof. Each petition must stand on its own individual merits. There is no requirement either in the regulations or in USCIS procedural documentation requiring nonimmigrant petitions to be combined in a single record of proceeding.² Accordingly, the Director and the AAO was not required to request and obtain a copy of the prior H-1B petition.

² USCIS does not engage in the practice of reviewing previous nonimmigrant petitions when adjudicating extension petitions. Given the various and changing jurisdiction over various nonimmigrant petitions and applications, requiring previously adjudicated nonimmigrant petitions to be reviewed before any newly filed application or petition could be adjudicated would result in extreme delays in the processing of petitions and applications. Furthermore, such a suggestion, while being impractical and inefficient, would also be a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361.

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Again, the Petitioner in this case did not submit a copy of the prior H-1B petition and its respective supporting documents. As the record of proceedings does not contain evidence from the prior petition, there were no underlying facts to be analyzed and, therefore, no analysis pertaining to the prior H-1B approval could have been provided. The burden of proving eligibility for the benefit sought remains entirely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361. For this additional reason, the Yates memo does not apply in this instance.³

Second, the Petitioner contends that we erred in our conclusion that the proffered position does not qualify as a specialty occupation. In particular, the Petitioner asserts that the proffered position satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and that we erred in our interpretation of this criterion.⁴ The Petitioner disagrees with our interpretation of the term “degree” in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) as requiring a degree *in a specific specialty*. The Petitioner attests that “meeting one of the four objective criteria [in 8 C.F.R. § 214.2(h)(4)(iii)(A), without more,] is sufficient to prove the position is a specialty occupation.”

Again, the Petitioner’s assertions are unpersuasive. As indicated in our previous decision, 8 C.F.R. § 214.2(h)(4)(iii)(A) (and any criterion in this subsection) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii) as to require not only a bachelor’s or higher degree, but a bachelor’s or higher degree *in a specific specialty*, or its equivalent. In other words, the regulatory language in 8 C.F.R. § 214.2(h)(4)(iii)(A) must be construed in harmony with the thrust of section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), both of which define the term “specialty occupation” as requiring the attainment of a bachelor’s or higher degree in a “specific specialty” or its equivalent.⁵ See *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole

³ We note that our decision and the Director’s June 11, 2014, decision provided detailed explanations of the reasons why the proffered position does not qualify as a specialty occupation. We further observe that the Director’s decision discussed apparently new material information (relating to the Beneficiary’s position on the Board of Directors and as the Coordinator of Student Services) which raised concerns regarding the duties performed by the Beneficiary and the nature, scope, and activity of the Petitioner, and also indicated that the instant proffered position is not the same as the previously proffered market research analyst position. For example, as noted by the Director in the request for evidence, the Petitioner’s on-line publications indicated that the Beneficiary is the Coordinator of Student Services and holds a position on the Board of Directors. See [redacted] and

[redacted] The Petitioner’s submission of a document with job descriptions states that its Coordinator of Student Services performs duties such as “[i]nteract with students and provide them with administrative or personal guidance.” None of the stated duties of the Coordinator of Student Services are related to the position proffered here.

⁴ The Petitioner did not address the other regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)-(4) under the belief that it had demonstrated eligibility under the first criterion.

⁵ The statute contains the term “a bachelor’s or higher degree in *the* specific specialty (or its equivalent)” while the regulation contains the term “a bachelor’s degree or higher in *a* specific specialty, or its equivalent (emphasis added).”

Despite the statutory “the” and the regulatory “a” which both denote a singular “specialty,” we do 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. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This will be discussed in greater detail below.

is preferred); *see also* *COIT Independence Joint Venture v. Fed. Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). The criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should therefore logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).⁶

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), it was not erroneous for us to interpret the term “degree” in the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) to mean a baccalaureate or higher degree *in a specific specialty* (or its equivalent), as we have consistently done in the past. In fact, the court in *Raj and Co. v. USCIS*, 85 F. Supp. 3d 1241, 1246 (W.D. Wash. 2015), expressly agreed with this interpretation, characterizing it as “reasonable” and “well-settled in the case law.” We thus did not err or add “a substantive requirement to the regulations” as asserted by the Petitioner.

As 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) should logically be read as to normally require at least a baccalaureate or higher degree *in a specific specialty* (or its equivalent), the Petitioner’s requirement of an unspecified bachelor’s degree, or a general-purpose business administration degree (such as that held by the Beneficiary), is insufficient to establish eligibility under this criterion. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (stating that a degree requirement of a general-purpose bachelor’s degree, such as a business administration degree, without more, will not justify a position as a specialty occupation).⁷ Although we specifically discussed these deficiencies regarding an unspecified degree or a degree in business administration in our May 1, 2015, decision, the Petitioner did not further address them on motion.

⁶ The Petitioner claims on appeal that “nowhere in *Defensor* did the court make such a conclusion,” and that the *Defensor* court states that 8 C.F.R. § 214.2(h)(4)(iii)(A) “creates necessary and sufficient conditions for this category.” We disagree with the Petitioner’s reading of *Defensor*. The *Defensor* court stated that “[i]f § 214.2(h)(4)(iii)(A) is read to create a necessary and sufficient condition for being a specialty occupation, the regulation appears somewhat at odds with the statutory and regulatory definitions of ‘specialty occupation.’” 201 F.3d at 387. The court then went on to state it “will *assume arguendo* that § 214.2(h)(4)(iii)(A) creates necessary and sufficient conditions for the category of ‘specialty occupation’ (emphasis added).”

⁷ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor’s or higher degree in business administration with a concentration in a specific field, or a bachelor’s or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor’s or higher degree in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

It is also important to note that a position may not qualify as a specialty occupation based solely on either a preference for certain qualifications for the position or the claimed requirements of a petitioner. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). Instead, the record must establish that the performance of the duties of the proffered position requires both the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as the minimum for entry into the occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”).

The Petitioner also asserts that our interpretation of the term “degree in the specific specialty” is overly restrictive. Citing to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) and *Raj and Co.*, the Petitioner contends that the term “degree in the specific specialty” relates not to the specific academic major, but instead, to the specialized nature of the body of knowledge acquired through specific academic courses. The Petitioner thus contends that degrees in disparate fields are acceptable because “[t]hese majors have common denominators within the highly specialized knowledge earned through common courses of study.”

Contrary to the Petitioner’s assertion that we “[dismiss] the idea that an occupation could be a specialty occupation when a degree from more than one field of study meets the minimum educational requirements,” we acknowledge that a position may qualify as a specialty occupation if it permits, as a minimum entry requirement, degrees in more than one directly related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties, provided, again, that the Petitioner establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). The Petitioner in this matter, however, has not established that the acceptable degrees for the proffered position are directly related to the duties and responsibilities of the particular position.

According to the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*, in addition to a degree in market research, degrees in statistics, math, computer science, business administration, any of the social sciences, or communications may also suffice for entry into market research analyst positions. U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., “Market Research Analyst,” <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Dec. 4, 2015). The Petitioner’s own requirements, which include a general bachelor’s degree and a general-purpose degree in business administration, appear consistent with the *Handbook*’s implication that degrees in disparate fields are acceptable. The issue here is that the Petitioner has not established how the degrees in disparate fields, such as mathematics and the social sciences, are directly related to the duties and responsibilities of the particular position, such that these degrees could be recognized as satisfying the degree requirement in “the” or “a” “specific specialty” (or its equivalent) of section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

While the Petitioner broadly claims that “[t]hese majors have common denominators within the highly specialized knowledge earned through common courses of study,” the Petitioner has not sufficiently corroborated this claim. For instance, the Petitioner has not specifically identified and documented which “common courses of study” are shared between majors such as mathematics and the social sciences. Nor has the Petitioner explained in detail how these “common courses of study” would provide the body of specialized knowledge necessary to perform the proffered duties. “[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.” *In re Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Thus, the

Petitioner has not established that we erred in finding that the proffered position also does not qualify as a specialty occupation based upon the acceptance of degrees in disparate fields.

In this respect, we find the Petitioner's reliance upon *Residential Finance Corp.* and *Raj and Co.* misplaced. While these cases also involved positions under the market research analysts occupational classification, the Petitioner has not furnished sufficient evidence to establish that the facts of these cases are otherwise analogous to the facts in the instant petition. For instance, we note the lack of evidence that the petitioners in *Residential Finance Corp.* and *Raj and Co.* accepted a general bachelor's degree or a degree in business administration, without further specialization, as the Petitioner does here. We also note, for example, that the district judge's decision in *Residential Finance Corp.* appears to have been based largely on the many factual errors made by the Director in the decision denying the petition.⁸ Therefore, although we agree with the general propositions in *Residential Finance Corp.* and *Raj and Co.* that "[t]he knowledge and not the title of the degree is what is important" and that specialty occupations are not restricted to "those for which there exists a single, specifically tailored and titled degree program," these general propositions are insufficient to overcome the particular deficiencies in this case. See *Residential Finance Corp.*, 839 F. Supp. 2d at 996-97; see also *Raj and Co.*, 85 F. Supp. 3d at 1247-48.

Overall, the documents constituting this motion do not sufficiently articulate how our decision on appeal misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when the decision to dismiss the appeal was rendered. Accordingly, the Petitioner's motion to reconsider will be denied.

III. CONCLUSION

The motion does not meet the requirements for a motion to reconsider. Therefore, the motion will be denied.

The Petitioner should note that, unless USCIS directs otherwise, the filing of a motion to 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

⁸ In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decisions of United States district courts in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

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(BIA 2013). Here, that burden has not been met. Accordingly, the motion will be denied, the proceedings will not be reconsidered, and our previous decision will not be disturbed.

ORDER: The motion to reconsider is denied.

Cite as *Matter of F-C-U-, Inc.*, ID# 14666 (AAO Dec. 9, 2015)