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

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

MATTER OF R-, LLC

DATE: DEC. 23, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a restaurant, seeks to employ the Beneficiary as a "restaurant manager" 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 insufficient to establish that the proffered position met any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and thus, that the proffered position qualified for classification as a specialty occupation. On motion, the Petitioner asserts that the evidence of record was sufficient to establish eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The Petitioner contends that we erred in our analysis of this criterion by discounting the previously submitted letter from [REDACTED] General Counsel and Executive Vice President of the [REDACTED].

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 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."

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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. 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, we will deny the motion to reconsider.

In this matter, the Petitioner’s motion does not satisfy the requirements of a motion to reconsider. The Petitioner’s stated reasons for reconsideration are insufficient to establish that our previous decision was incorrect.

On motion, the Petitioner asserts that the letter from [REDACTED] of the [REDACTED] [REDACTED] was sufficient to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The Petitioner states that this letter “was issued to explain why *some employers* require restaurant managers to have a Bachelor’s degree or its equivalent, and limits the scope of its assessment to the position offered by

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the Petitioner in the instant petition.” The Petitioner further states that “[s]ince the [REDACTED] letter is specifically limited to assessing the Restaurant Manager position at the Petitioner in comparison with similar positions at other fine dining restaurants it satisfies the regulatory requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).”

However, the Petitioner has not provided evidence corroborating its assertions on motion. [REDACTED] letter itself does not indicate that he “limit[ed] the scope of [his] assessment” to the particular position being proffered at the Petitioner’s particular operations. Instead, the letter contains broad statements about “some employers” and “restaurant managers” *in general*, without specific and concrete references to the actual duties of the proffered position within the context of the Petitioner’s particular operations. 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’l Comm’r 1972)).

As we stated in our previous decision, there are numerous deficiencies with [REDACTED] letter that led to our decision to accord it little probative value. For instance, we observed that [REDACTED] did not explain the factual basis for his conclusions, as he did not state what documents and/or oral transmissions he reviewed, if any. [REDACTED] did not indicate whether he made any personal observations or communicated with anyone with knowledge of the proffered position and its constituent duties. He also did not indicate whether he was aware of the Petitioner’s submission of an LCA that was certified for a Level I, entry-level position. Moreover, [REDACTED] did not specify whether a bachelor’s degree *in a specific specialty* is required to perform the duties of the proffered position, as his letter simply referred to a general bachelor’s degree and such a degree requirement by “some” employers. However, the Petitioner did not specifically address these and other deficiencies we noted in our decision in support of the instant motion.

Accordingly, we cannot find that the Petitioner has properly stated reasons for reconsideration, and supported those reasons by citations to pertinent statutes, regulations, and/or precedent decisions to establish that our decision was based on an incorrect application of law or policy. The Petitioner’s motion to reconsider must therefore be denied.

III. CONCLUSION

The motion does not meet the requirements for a motion to reconsider, nor does it merit reconsideration. The motion to reconsider will be denied.

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 motion to reconsider will be denied, the proceedings will not be reconsidered, and our previous decision will not be disturbed.

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ORDER: The motion to reconsider is denied.

Cite as *Matter of R-, LLC*, ID# 14964 (AAO Dec. 23, 2015)