



U.S. Citizenship  
and Immigration  
Services

(b)(6)



**JUL 27 2015**

DATE:

PETITION RECEIPT #:



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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office, 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 71-employee "Home Health Care Provider" established in [REDACTED]. In order to continue to employ the beneficiary in what it designates as a "Medical and Health Services Manager" 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, finding that the evidence did not establish that the proffered position qualifies for classification as a specialty occupation position. We dismissed a subsequent appeal, affirming the Director's decision. 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. The petitioner subsequently submitted a Form I-290B, Notice of Appeal or Motion, contesting our decision to dismiss the appeal.

#### I. MOTION REQUIREMENTS

For the reasons discussed below, we conclude that this combined motion will be dismissed because the motion does not merit either reopening or reconsideration.

##### 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 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:

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:<sup>1</sup>

**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.

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)

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<sup>1</sup> 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, notwithstanding any provision of 8 C.F.R. chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission.

("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

The submission constituting the combined motion includes, *inter alia*: (1) the Form I-290B; and (2) a brief.<sup>2</sup> In the brief, the petitioner asserted, as it did on appeal, that the proffered position is a medical and health services manager position and that such positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

### A. Dismissal of the Motion to Reopen

Upon review, we find that the petitioner did not provide any new facts in this motion. Much of the evidence submitted with the motion was previously submitted and is of no direct relevance to whether the proffered position qualifies as a specialty occupation position. The petitioner has not established that the evidence submitted with this motion would change the outcome of this case if the proceeding were reopened.

"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

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<sup>2</sup> In addition to the Form I-290B, the petitioner provided documents that are not directly relevant to whether the proffered position qualifies for classification as a specialty occupation position, which is the issue upon which our February 26, 2015 decision was based. Those documents include, *inter alia*, a USCIS release pertinent to relief measures for victims of a typhoon and evidence pertinent to the beneficiary's qualifications.

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) (detailing the requirements for a motion to reconsider).

In this matter, the petitioner claimed that the proffered position is a medical and health services manager position and that such positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. In the decision of denial, the Director found that the petitioner had not demonstrated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. On appeal, the petitioner reiterated its position that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. We found that the evidence shows that the proffered position is not a medical and health services manager position but, rather, a registered nurse position, and further affirmed the Director's finding that the proffered position has not been shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent.<sup>3</sup>

On motion, the petitioner reiterates the assertion that the proffered position is a medical and health services manager position and that such positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner contends that "the majority of the beneficiary's proposed duties" are duties performed by medical and health services managers and not those performed by registered nurses. The petitioner further asserts that the proffered position is "a generic one applicable to any number of industries such as Nursing Home Administrators, Clinical Manager, Health and Information Manager and Assistant Administrators."

In the brief submitted with the motion, the petitioner claims that the proffered position qualifies as a specialty occupation, describes the nature of the petitioner's business operations, reiterates the job description for the proffered position, and describes the beneficiary's qualifications for the proffered position. Upon review, we find that the petitioner did not properly state the reasons for reconsideration. While the petitioner cites the statute and regulations that govern the specialty

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<sup>3</sup> We note that assuming *arguendo* that the proffered position is a medical and health services manager position, the petitioner has not established that the proffered position is a specialty occupation. For example, the petitioner asserts that according to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, "a Bachelor's Degree is the minimum required level of education for entry" into this occupational category. However, we note that the *Handbook* does not indicate that a bachelor's degree in a specific specialty is required for such positions. Specifically, the *Handbook* reports that a degree in health services, long-term care administration, public health, public administration, or business administration are common for entry into the occupation. Notably, the *Handbook* states that a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration, is acceptable to perform the duties of the occupation. However, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

occupation classification, it does not articulate how our decision was based on an incorrect application of law or policy.<sup>4</sup>

We conclude that the documents constituting this motion do not 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. The petitioner has therefore not submitted any document that would meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider must be dismissed.

### III. CONCLUSION

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. Accordingly, the combined motion will be dismissed, the proceedings will not be reopened or reconsidered, and our previous decision will not be disturbed.

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<sup>4</sup> In any event, we again find that the Director did not err in determining that the duties of the proffered position are performed by experienced registered nurses or head nurses. The petitioner initially claimed that it requires only a minimum of a bachelor's degree in nursing. Specifically, the description of the proffered position submitted with the petition lists management responsibilities as well as patient care duties and it also states, "Must have a Bachelor's Degree preferably in Nursing because of the nature of the job; with two (2) years of work experience in their field." Further, the petitioner's letter of support states, "Although requirements vary by facility, [the petitioner] requires a minimum of a Bachelor's of Science degree in Nursing." In response to the service center's Request for Evidence (RFE), the petitioner cited to a position evaluation provided by Dr. [REDACTED] and changed its stated requirements to a "bachelor's degree in Physical Therapy, Nursing, Medical Records Management or related subject . . . ." The petitioner cited to Dr. [REDACTED]'s opinion on appeal and again on motion.

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, its associated job responsibilities, or the requirements of the position. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the service center's RFE did not clarify or provide more specificity to the original requirements of the position, but rather changed the educational requirements for the proffered position.

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*NON-PRECEDENT DECISION*

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**ORDER:** The combined motion is dismissed.