



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

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

MATTER OF D-J-I-, INC.

DATE: OCT. 7, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a six-employee “Retail” business established in 2009, seeks to continue the employment of the Beneficiary as an “Accountant” from October 10, 2013 to October 10, 2014. The Petitioner endeavors to extend the Beneficiary’s classification as an H-1B 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, Vermont Service Center, denied the petition. The Petitioner appealed the denial to us, which we dismissed. The matter is now before us on a combined motion to reopen and reconsider. The combined motion will be denied.

**I. MOTION REQUIREMENTS**

For the reasons discussed below, we conclude that this combined motion will be denied 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 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 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 demonstrating eligibility at the time the underlying petition or application was filed."<sup>1</sup>

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 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

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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 CFR chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission.

(b)(6)

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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

The submission constituting the combined motion consists of the following: (1) the Form I-290B; (2) the Petitioner's brief in support of the combined motion; (3) 2013 federal tax return for ' [REDACTED]'; and (4) Forms 941, Employer's Quarterly Federal Tax Returns, for the first, second, and third quarters of 2014 for ' [REDACTED] '.

### A. Motion to Reopen

While the Petitioner has provided new documents in the form of new federal tax returns, the Petitioner has not explained the relevance of these documents. These tax returns appear to be for a different company, " [REDACTED] " or " [REDACTED] " with an employer identification number (EIN) of [REDACTED]. The Petitioner here is [REDACTED], with an EIN of [REDACTED]. On motion, the Petitioner did not submit any explanation or documentation establishing the relationship between itself and this other company, if any.

Regardless, even assuming *arguendo* that the newly submitted tax returns relate to the Petitioner, the Petitioner has not adequately explained the significance of these new returns. The Petitioner simply stated on motion that "[i]t is typical for a retail management company with approximately \$9.4 million in gross annual revenues to hire someone in a professional position to perform specialized financial management duties," but provided no further explanation.<sup>2</sup> Overall, it is not readily apparent how the newly submitted tax returns, even if relevant, would change the outcome of this case if the proceeding were reopened.<sup>3</sup> *See Matter of Coelho*, 20 I&N Dec. at 473 (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"); *see also Maatougui v. Holder*, 738 F.3d at 1239-40.

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<sup>2</sup> We note that the Petitioner made the same assertions on appeal and in response to the Director's RFE, except that the Petitioner cited to its 2012 gross annual revenue of approximately \$1.8 million. 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)).

<sup>3</sup> We also note that the newly submitted 2013 federal tax return was again prepared by the same outside accounting firm, [REDACTED]. In our January 28, 2015 decision, we questioned why the Petitioner's tax returns were prepared by an outside accounting firm when one of the Beneficiary's stated job duties is to prepare the company's tax returns.

“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. at 94). 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 heavy burden.

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

In the motion brief, the Petitioner asserted that the proffered position qualifies as a specialty occupation for the same reasons stated in prior proceedings. The Petitioner did not articulate how our January 28, 2015 decision which rejected these arguments was based on an incorrect application of law or policy; in fact, the Petitioner did not address or make any reference to our January 28, 2015 decision. As previously discussed, the reiteration of previous arguments or general allegations of error will not suffice. The Petitioner 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. As the Petitioner did not properly state the reasons for reconsideration, the motion to reconsider must be denied.

The submission does not meet the applicable requirements for a motion for an additional reason. More specifically, the motion does not contain a statement pertinent to whether the validity of the unfavorable decision has been or is the subject of any judicial proceeding, which is required by 8 C.F.R. §103.5(a)(1)(iii)(C). Thus, the combined motion must also be dismissed for this reason.

### 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 denied,

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the proceedings will not be reopened or reconsidered, and our previous decision will not be disturbed.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of D-J-I, Inc.*, ID# 13636 (AAO Oct. 7, 2015)