



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

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

MATTER OF R-T-L-, CORP.

DATE: SEPT. 18, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a freight forwarding and logistics services firm, seeks to employ the Beneficiary as a logistician and to classify her as a nonimmigrant worker in a specialty occupation. *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, California Service Center, denied the petition and we dismissed the subsequently filed appeal. The matter is again before us on a combined motion to reopen and motion to 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 it 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, Notice of Appeal or Motion, 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 that “[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 that motions to reopen “must state new facts and must be supported by affidavits and/or documentary evidence demonstrating eligibility at the time the underlying petition . . . 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).

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<sup>1</sup> The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, that “[e]very 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, and such instructions are incorporated into the regulations requiring its submission.”

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 AND ANALYSIS

The submission constituting the combined motion consists of the following: (1) the Form I-290B; (2) a brief; and (3) documentary evidence, including evidence previously submitted. The new documents submitted with the motion include:

- Evidence of the Beneficiary’s foreign degree and certificates;
- Portions of the Harmonized Tariff Schedule of the United States (2015);
- Packing lists and invoices;
- Work Processes on web maintenance;
- Resumes for the petitioner’s office manager and one logistician; and
- A diploma for one logistician.

### A. Denial of the Motion to Reopen

We find that the Petitioner’s submissions on motion did not meet the requirements of a motion to reopen. Despite the Petitioner’s submission of documents not previously included in the record, a review of the evidence submitted on motion reveals no fact that could have been considered new under 8 C.F.R. § 103.5(a)(2). Additionally, we observe that all documents submitted in support of this motion were previously available.

As noted above, 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*, 20 I&N Dec. at 473; *see also Maatougui v. Holder*, 738 F.3d at 1239-40. Such is not the case here. The Petitioner has not established the relevance of the evidence submitted in demonstrating that the proffered position is a specialty occupation.<sup>2</sup> For example, the work samples, packing lists, and work

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<sup>2</sup> The Petitioner’s submission of the Beneficiary’s foreign degree and certificates is not relevant to establishing the proffered position is a specialty occupation. A beneficiary’s qualifications do not establish a position as a specialty occupation. Moreover, as observed in our prior decision, the record does not include an evaluation of the Beneficiary’s

processes on web maintenance do not indicate the involvement of the Petitioner's logisticians in these processes. Moreover, this documentation does not substantiate how or why any duties preparing or reviewing this information are so specialized and complex that the individual performing the duties must have a degree in a specific discipline. The resume of the Petitioner's office manager is not relevant to this matter as the proffered position is for a logistician, not an office manager. The resume for one of the Petitioner's logisticians shows the individual has a U.S. bachelor's degree in business administration but the Petitioner does not supply the diploma or other documentary evidence supporting the information on the resume. Furthermore, as observed in our prior decision, a degree in a discipline of general application, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Reg'l Comm'r 1988). The diploma for the Petitioner's other logistician is for a U.S. bachelor's degree in hotel and restaurant management, demonstrating that the Petitioner's position titled logistician may be performed by individuals who do not have a bachelor's degree in a specific discipline directly related to the duties of a logistician. Upon review of the evidence submitted in support of this motion to reopen, we find that the evidence, even if considered, would not 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. Denial 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 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).

On motion, the Petitioner repeats its claim that the proffered position qualifies as a specialty occupation, contends that it requires a minimum of a general bachelor's degree to perform the duties of the proffered position, and describes the Beneficiary's qualifications for the proffered position. While the Petitioner cites the regulations that govern the specialty occupation classification, the Petitioner does not articulate how our decision was based on an incorrect application of law or policy. 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

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foreign degree and her U.S. degree appears to be a general degree in business administration.

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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 denied.

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

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

Cite as *Matter of R-T-L-, Corp.*, ID# 14744 (AAO Sept. 18, 2015)