



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

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

MATTER OF RNE-S-R- LLC

DATE: AUG. 2, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a healthcare professionals staffing firm, seeks to temporarily employ the Beneficiary as a “quality assurance manager” under the H-1B nonimmigrant classification for specialty occupations. 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 H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation. We dismissed a subsequent appeal, finding that the Petitioner had not demonstrated that it had secured any definite, non-speculative work for the Beneficiary to perform throughout the period of intended employment. We further found that the Petitioner had not, therefore, shown that it would employ the Beneficiary as claimed, and had not established that, the Beneficiary would work in a specialty occupation position. We then denied a subsequent motion to reconsider, finding that it did not meet the regulatory requirements for such a motion.

The matter is now before us on a motion to reopen and a motion to reconsider. In its motion, the Petitioner asserts that the evidence of record is sufficient to demonstrate that the H-1B petition should be approved.

We will deny the motion.

## 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, 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:

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 . . . 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.

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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, and such instructions are incorporated into the regulations requiring its submission.”

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 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 the 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. ANALYSIS

The submission constituting the combined motion consists of the following: (1) the Form I-290B; (2) a brief submitted by counsel; and (3) documentary evidence. Included in the documentary evidence are, (1) a portion of the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* pertinent to medical and health services managers and (2) a July 21, 2015 Policy Memorandum issued by USCIS.

### A. Dismissal of the Motion to Reopen

Initially, we observe that the only decision the instant motion challenges is our decision denying the first motion, where we found that the submission did not meet the requirements for a motion to reconsider. None of the new evidence submitted addresses that point. As such, the Beneficiary has submitted no new relevant evidence with the motion to reopen. In any event, the Petitioner has not established that the evidence submitted on this motion would change the outcome of the previous motion to reconsider if that proceeding were reopened.<sup>2</sup>

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<sup>2</sup> Even if the Petitioner were addressing the decision we made dismissing its initial appeal, which was issued prior to our decision denying the first motion, the evidence would not be directly relevant. In that decision, we found that the Petitioner had not demonstrated that, when it submitted the visa petition, it had secured any work for the Beneficiary to perform. None of the evidence submitted with the instant visa petition addresses that finding.

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“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 and its counsel have 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 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).

The decision that the Petitioner challenges with the instant motion is our decision on the previous motion, in which we found that the motion did not meet the regulatory requirements for a motion to reconsider. On the instant motion, neither the brief nor the evidence submitted addresses that finding.<sup>3</sup>

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<sup>3</sup> Again, if the Petitioner were addressing our previous decision dismissing the appeal, it would not prevail based on the evidence submitted. In the H-1B petition, the Petitioner stated that the Beneficiary would work at [REDACTED] in [REDACTED] New York. Our decision on appeal observed that the Petitioner had not demonstrated that it had secured work at that location for the Beneficiary to perform. In the instant brief, the Petitioner stated:

The Administrative Appeals Office in its decision dated 08 February 2016 [our decision dismissing the appeal] posited the vagueness of our manifestation that the H-1B Program has in place an opportunity in favor of petitioning employer, to amend H-1B approvals when a substantial change in the conditions of employment of the Beneficiary has occurred, including but not limited to a change of worksite.

Contrary to the doubt manifested by the AAO in stated decision, the Immigration Service has released its Policy Memorandum dated 21 July 2015, supporting our position. This Policy resulted from the [decision in *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015)] where the [AAO] has made clear that H-1B employers are required to amend H-1B approvals when a change of worksite occurs. Therefore, the petitioning H-1B employers are indeed provided remedy under the H-1B Program to file amendment for this purpose, thus, in the instant case, renders the questioned speculative nature of the proffered position maintained by the Service, without basis in law and in fact.

The Petitioner appears to have misconstrued the decision in *Simeio* and the directives of the policy memorandum cited to provide a means of curing an H-1B petition in the event that the Beneficiary will not be employed in a location for which the LCA is valid. To the contrary, the decision in *Simeio* does not permit the Petitioner to make a moderate change to a previously submitted visa petition so as to render it approvable. The decision in *Simeio* and the policy memorandum make clear that, if a Beneficiary will work at a location for which the LCA submitted with a visa petition is not valid, the

We conclude that the documents constituting this motion do not articulate how our decision on the previous motion misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when the decision to deny the motion was rendered. The Petitioner has, therefore, not submitted any evidence that would meet the requirements of a motion to reconsider. Accordingly, the motion to reconsider must be denied.

### III. CONCLUSION

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

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.

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

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

Cite as *Matter of RNE-S-R-, LLC*, ID# 18049 (AAO Aug. 2, 2016)

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Petitioner must file a new visa petition with the change in location incorporated in it. Even if the question were properly before us, *Simeio* would not render the instant visa petition approvable.