



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

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

MATTER OF F-C-G-

DATE: AUG. 31, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a computer consulting business, seeks to extend the Beneficiary's temporary employment as a "computer systems analyst" under the H-1B nonimmigrant classification for specialty occupations. See Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 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 position. We denied a subsequent appeal.

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 proffered position should be approved.

We will deny the combined motion.

#### I. MOTION REQUIREMENTS

For the reasons discussed below, we will dismiss the combined motion because the motion does not merit 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: “**Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence.” See 8 C.F.R. § 103.2(a)(1) (form instructions are incorporated into the regulations requiring its submission).

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).

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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

### A. Dismissal of the Motion to Reopen

Upon review, we find that the Petitioner did not provide any new facts in this motion. The Petitioner resubmitted copies of evidence, e.g., printouts showing coding of a computer program, which was previously submitted and considered.

The Petitioner explains that it is resubmitting this evidence because our appeal “ignored this evidence,” and requests us to “properly assess it in the context of USCIS’ issues with this case.” But even if we were to treat this evidence as “new” and therefore properly before us on motion, however, we still would find it insufficient to demonstrate that the Petitioner has non-speculative, specialty occupation work available for the Beneficiary.

For instance, the code print-outs identify the “application name” as “CROSS APPLICATION.” The Petitioner has not sufficiently explained how this application relates to the [REDACTED] project the Beneficiary is purportedly assigned to. Also according to the print-outs, the program codes were developed and revised as recently as February or April 2015 by an individual identified as [REDACTED]. This individual does not appear anywhere in the record as the Petitioner’s employee; he is not listed in either of the Petitioner’s two employee lists (current as of 2015), nor in the company’s organizational chart.

Moreover, the Petitioner has not sufficiently explained how the program codes (or other previously submitted evidence) adequately convey the nature of the Beneficiary’s actual job duties. As we pointed out in our prior decision, despite the Petitioner’s assertion that the Beneficiary would only work on the Petitioner’s in-house project developing proprietary software, the Beneficiary’s duty description makes explicit that she would work on projects for the Petitioner’s clients. The Beneficiary’s stated duties include, for example, “analyzing the communication, informational and

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<sup>1</sup> The print-outs contain a “Revision Log” dated February 20, 2015. The Petitioner states on motion that these documents were updated as recently as April 2015.

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programming requirements of clients” and “designing programming and implementing software applications & packages customized to meet specific client needs.” The Petitioner has not sufficiently explained how these job duties relate to the Petitioner’s internal [REDACTED] system, which the Petitioner insists has “remained in the development stage and had not yet gone to market.”

Overall, the Petitioner did not provide any new facts in this motion. And even if the Petitioner’s evidence on motion presents new facts (which it does not), the Petitioner still has not established that the new evidence would change the outcome of this case if the proceeding were reopened. 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*). A party seeking to reopen a proceeding bears a “heavy burden” of proof. *INS v. Abudu*, 485 U.S. 94, 110 (1988). With the current motion, the Petitioner has not met that heavy burden. The motion to reopen will be denied.

B. Dismissal of the Motion to Reconsider

In the motion to reconsider, the Petitioner urges that our prior decision was incorrect based on the evidence in the record.

We dismissed the appeal, finding the evidence insufficient to establish that the Petitioner had sufficient in-house projects to employ the Beneficiary performing specialty occupation duties throughout the period of requested employment. We do not, in any way, retract that finding.<sup>2</sup>

We also found that the Petitioner had not adequately demonstrated eligibility under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). As we discussed in our previous decision, by not demonstrating the availability of non-speculative internal work for the Beneficiary, the Petitioner is precluded from establishing the proffered position as a specialty occupation because it is the substantive nature of the Beneficiary’s actual work that determines eligibility under each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). We also discussed in our decision, *inter alia*, the lack of support from the Department of Labor’s *Occupational Outlook Handbook (Handbook)* that a position under the “Computer Systems Analysts” occupational classification normally requires at least a bachelor’s degree in a specific specialty, or its equivalent, under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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<sup>2</sup> Our finding is supported by the Petitioner’s numerous and repeated statements to the effect that it is primarily a consulting firm, that its “client projects are our primary activity and take priority over any in-house development,” and that, “at any time and without notice,” “all [the Petitioner’s] hires are informed that if a client project comes up, they may be reassigned.” Although the Petitioner reassures that the Beneficiary is and will not be one of those reassigned individuals, the Petitioner’s past practices and the lack of relevant documentation regarding the [REDACTED] project to which the Beneficiary is purportedly assigned led us to conclude otherwise.

On motion, the Petitioner reasserts the position's eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). In particular, the Petitioner relies on the *Handbook's* introductory statement that "[m]ost computer systems analysts have a bachelor's degree in a computer-related field." However, while we too acknowledged that statement in the *Handbook*, we also previously highlighted the *Handbook's* statements that "[a]lthough many computer systems analysts have technical degrees, such a degree is not always a requirement. Many analysts have liberal arts degrees and have gained programming or technical expertise elsewhere."<sup>3</sup> The Petitioner has not addressed these statements in its motion, and therefore has not overcome our concerns that the *Handbook* as a whole – notwithstanding the first introductory sentence – does not report that a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into this occupation.

The Petitioner's motion to reconsider does not assert that we erred in our findings with respect to any other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We conclude that the documents constituting this motion do not demonstrate that 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 not therefore met the requirements of a motion to reconsider. Accordingly, the motion to reconsider will be denied.

### III. CONCLUSION

The combined motion does not meet the requirements for a motion to reopen or a motion to reconsider. Accordingly, the combined motion will be denied, the proceedings will not be reopened or reconsidered, and our previous decision will not be disturbed.

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.

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

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

Cite as *Matter of F-C-G-*, ID# 17722 (AAO Aug. 31, 2016)

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<sup>3</sup> See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Computer Systems Analysts," <http://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm#tab-4> (last visited Aug. 24, 2016).