



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

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

MATTER OF ZE-

DATE: JULY 27, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a furniture import and sales business, seeks to extend the Beneficiary's temporary employment as a "business/import 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, California Service Center, denied the petition. The Director concluded that there was insufficient evidence to establish that the proffered position qualifies as a specialty occupation. The Petitioner subsequently filed an appeal. We dismissed the appeal, concluding that the evidence of record was inadequate to establish the substantive nature of the proffered position, and thus, that the proffered position qualified as a specialty occupation.

The matter is now before us on a combined motion to reopen and reconsider. In its motion, the Petitioner elaborates upon the skills needed to perform the proffered position. The Petitioner asserts that it "has adequately described the duties of the proffered position as requiring theoretical and practical application of specialized knowledge through a minimum of Bachelors [*sic*] degree."

Upon review, 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 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 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.¹

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:

¹ 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.”

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 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-López 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

For the reasons discussed below, the combined motion will be denied.

In support of the motion, the Petitioner submits a brief explaining why it believes the proffered position qualifies as a specialty occupation. It also re-submits a copy of the chapter on “Operations Research Analysts” from the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*, which was previously submitted and considered on appeal. The Petitioner has not, however, presented any evidence that could be considered “new facts.” As such, the Petitioner’s motion does not satisfy the requirements of a motion to reopen. The motion to reopen will be denied.

Nor does the Petitioner’s motion satisfy the requirements of a 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 must 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) (requirements for a motion to reconsider); Instructions for Motions to Reconsider at Part 4 of the Form I-290B.

Here, the Petitioner’s stated reasons for reconsideration are insufficient to establish that our decision was incorrect.

On motion, the Petitioner describes how the proffered duties correspond to the “Operations Research Analysts” occupational classification as described in the *Handbook*, and elaborates upon the skills needed to perform the proffered position. However, we find that the Petitioner’s additional descriptions of the proffered duties and required skills are still inadequate to establish the substantive nature of the proffered position. For example, in our January 15, 2016, decision, we questioned whether the “Operations Research Analysts” occupational classification chosen by the Petitioner is appropriate for the proffered duties, as the Petitioner had not explained in detail the nature of the mathematical and analytical methods the Beneficiary will utilize, or the nature of the “problems” the Beneficiary will address. The Petitioner simply states on motion: “The models and methods used by operations research analysts are rooted in statistics, calculus, linear algebra, and other advanced mathematical disciplines. The Beneficiary does utilize the math skills when reviewing and analyzing Purchasing Arrangements/agreements.” The Petitioner does not further elaborate upon or give examples of the “advanced” math skills the Beneficiary utilizes, and what types of “problems” the Beneficiary will address in reviewing and analyzing purchasing arrangements and agreements. “[G]oing 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 Cal.*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Moreover, in the instant motion, the Petitioner has only addressed one aspect of our decision. For example, in our January 15, 2016, decision, we found numerous inconsistencies and deficiencies regarding the job duties within the context of the Petitioner’s operations, such as the lack of any apparent sales or showroom staff even though the Petitioner is a furniture retail business. We also discussed deficiencies regarding the minimum educational requirement for the proffered position, such as the Petitioner’s apparent requirement of a general bachelor’s degree or a degree with a generalized title, e.g., a degree in business administration. The Petitioner has not addressed these inconsistencies and deficiencies, which further preclude the finding that the proffered position qualifies as a specialty occupation.² As previously noted, general allegations of error will not suffice. *See Matter of O-S-G-*, 24 I&N Dec. at 60. The Petitioner must state the specific factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision. *Id.* The Petitioner has not done so here.

Overall, the documents constituting this motion do not sufficiently 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. Accordingly, the Petitioner’s motion to reconsider will be denied.

² We also observed deficiencies regarding the Beneficiary’s qualifications to perform services in a specialty occupation and noted that the Petitioner should address this additional ground in any future filing. On motion, the Petitioner does not address the issue of the Beneficiary’s qualifications.

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) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). 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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of ZE-*, ID# 17457 (AAO July 27, 2016)