



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

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

MATTER OF B-M- INC.

DATE: JUNE 13, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a management group, seeks to temporarily employ the Beneficiary as a “hospitality manager” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) § 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 established (1) that the proffered position qualifies as a specialty occupation; and (2) that the Beneficiary is qualified to serve in a specialty occupation position in accordance with the applicable statutory and regulatory provisions. The Petitioner filed a combined motion to reopen and reconsider, and the Director affirmed her decision to deny the petition. The Petitioner filed a second combined motion to reopen and reconsider, and the Director again affirmed her decision to deny the petition. Thereafter, the Petitioner appealed the decision to us. We dismissed the appeal, concluding that the evidence of record was inadequate to establish that the duties of the proffered position comprise the duties of a specialty occupation.

The matter is now before us on a motion to reconsider. In its motion, the Petitioner asserts that we erred in finding that the evidence of record does not demonstrate that the proffered position is a specialty occupation.

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 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 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 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 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.

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II. DISCUSSION

In support of the motion, the Petitioner provides additional information regarding the duties of the proffered position, and emphasizes the position's responsibility over the company's training programs that apply to different visa types. However, we have previously considered these duties and training programs, and determined that they do not sufficiently establish relative complexity, uniqueness, or specialization as aspects of the proffered position. As stated above, the reiteration of previous arguments or general allegations of error will not suffice.¹ *See Matter of O-S-G-*, 24 I&N Dec. at 60.

Moreover, the Petitioner has not sufficiently articulated how our December 1, 2015, decision was based on an incorrect application of law or policy, and was incorrect based on the evidence of record at the time of decision. For example, in our December 1, 2015, decision, we determined that the Petitioner provided inconsistent information regarding the educational requirements for the proffered position, including the requirement of a computer-related degree. On motion, the Petitioner asserts that "[n]owhere did anyone stated that the petitioner requires someone holding a bachelors in an IT related field [*sic*]."

However, the Petitioner's assertions on motion are not consistent with the evidence of record. The Petitioner previously stated in its letter dated April 4, 2014, that the proffered position requires "at least a bachelor's degree in computer science, information technology and related field." The Petitioner previously submitted training plans which the Petitioner stated were "developed by Beneficiary," which include programs on "all aspects of the computer technology in the area of web development and design . . . [and] technical aspects of the IT field." The Petitioner also previously submitted copies of completed performance reviews for trainees in the Petitioner's "Hospitality and Web Development" and "IT and Web Development/Design" training programs. In its letters dated April 3, 2014, and May 29, 2014, the Petitioner explained that "[a]ll these trainees were and are trained by company's hospitality managers, including Beneficiary," and that "[a]ll of these trainee[s] have at-least a bachelor's degree, so it is naturally necessary for their trainer to have at-least the same level of education if not more." In light of the above, the Petitioner has not established that we erred in our findings and conclusion regarding the Petitioner's acceptance of computer-related degrees, and the lack of evidence that they are closely related to degrees in hotel management, hotel/tourism management, and/or hospitality management.

Also in our December 1, 2015, decision, we determined that the position evaluations from [REDACTED] and [REDACTED] are not in accord with other information in the evidence, and

¹ The Petitioner states on motion for the first time that the proffered position's duties "are a combination of duties responsible for by Training and Development Managers, Lodging Managers, and Human Resources Managers (details of these positions . . . were previously submitted by the petitioner as well)." However, the Petitioner has never before made this claim, and in fact has claimed the opposite, e.g., that "the role of Hospitality Manager certainly does not fall under the title of a lodging . . . manager." These assertions are therefore not properly before us on a motion to reconsider, which only considers 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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thus possess limited probative value. On motion, the Petitioner does not address the evaluation from [REDACTED]. The Petitioner asserts that the evaluations from [REDACTED] “cannot be disregarded, or ignored, or taken lightly” because [REDACTED] has known, studied and evaluated the petitioner’s business operations and programs for over ten years.”

However, the Petitioner does not provide additional factual information explaining in detail the nature and extent of [REDACTED] knowledge of the Petitioner’s operations, such as the type, number, and length of studies, research, and evaluations he has conducted into the Petitioner’s particular business operations. As we observed in our previous decision, while [REDACTED] claims in-depth knowledge of the Petitioner’s operations, there is no evidence that he has actually visited the Petitioner’s business operations or interviewed the Petitioner’s employees.

Nor does the Petitioner adequately address [REDACTED] statements that the Beneficiary “has responsibility over multiple departments at the hotel level,” despite the lack of credible evidence in the record that the Petitioner has managerial responsibilities over any hotels or their staff. As stated in our prior decision, the Petitioner’s partnerships with other hotels for cultural exchange programs are not equivalent to agreements for management services. The Petitioner has not identified and explained what other documents in the record credibly demonstrate the Petitioner’s claimed managerial responsibilities over other hotels.² As such, the Petitioner has not sufficiently established that we erred in according limited probative value to the evaluations from [REDACTED] and [REDACTED].

Overall, we find 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 when the decision to dismiss the appeal was rendered. Accordingly, the Petitioner’s motion to reconsider will be denied.

III. CONCLUSION

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

² The Petitioner has not pointed to what evidence in the record corroborates [REDACTED] statements that the Petitioner “is a management company, responsible for the operations of many hotels.” For instance, while the evidence of record contains the Petitioner’s internship program agreement with [REDACTED] we cannot find that an internship placement agreement would provide the Petitioner with managerial responsibility over another hotel’s operations. Furthermore, while the record also contains two statements of work, these documents do not describe in sufficient detail the Petitioner’s services to these hotels. The statements of work simply describe the “scope of work” as “[g]eneral hotel and restaurant operations including room division operations consulting, food and beverage, front desk, housekeeping, maintenance etc.” and “[g]eneral hotel room division operations consulting including food and beverage, front desk, housekeeping, maintenance etc.” We also observe the Petitioner’s previous statements that “[t]he beneficiary is not assigned to any hotel.” Thus, the evidence of record does not corroborate [REDACTED] statements that the Beneficiary has “responsibility over multiple departments at the hotel level.”

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(BIA 2013). Here, that burden has not been met. Accordingly, the motion to reconsider will be denied, the proceedings will not be reconsidered, and our previous decision will not be disturbed.

ORDER: The motion to reconsider is denied.

Cite as *Matter of B-M- Inc.*, ID# 17009 (AAO June 13, 2016)