



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

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

MATTER OF E-P-F-S-, LLC

DATE: MAY 24, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a wholesale food distributor, seeks to temporarily employ the Beneficiary as a "distribution & logistics manager" 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 for treatment as a specialty occupation. The Petitioner submitted an appeal of the Director's decision. We reviewed the record of proceedings and dismissed the appeal, finding that it did not contain sufficient evidence to establish that the Petitioner would employ the Beneficiary in a specialty occupation position. The Petitioner filed a motion to reopen and a motion reconsider, which we considered and denied.

The matter is again before us on a motion to reopen and a motion to reconsider. In its motion, the Petitioner submits additional evidence and asserts that the evidence is sufficient to show that the visa petition should be approved.

We will deny the combined 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:<sup>1</sup>

**Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence that established eligibility at the time the underlying petition or application was filed.

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 and must establish that the decision was

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

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 assertions 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.

The submission constituting the combined motion consists of the following: (1) the Form I-290B; (2) a brief; and (3) documentary evidence, consisting of the following documents:

- Invoices indicating that other companies shipped food and ingredients to the Petitioner, and that the Petitioner shipped food and food service goods to restaurants;
- Bank account statements; and
- The Petitioner’s 2014 Form 1120S, U.S. Income Tax Return for an S Corporation.

### A. Denial of the Motion to Reopen

Upon review, we find that the Petitioner did not provide any new facts in this motion. First, the Petitioner previously submitted similar invoices and bank statements, all of which were considered and found to be insufficient. Even if found relevant, this additional evidence would be merely cumulative. Moreover, although some of the invoices and bank statements, as well as the income tax return, postdate the filing of the previous motion, they do not address any material issue in this matter. The Petitioner asserts that the evidence “demonstrates that [the Petitioner] continues to grow as a company such that it requires the services of the Beneficiary.” The issue in this matter is neither whether the Petitioner continues to grow nor whether it requires the Beneficiary’s services. The issue is whether the Petitioner has demonstrated that the position proffered to the Beneficiary

qualifies for treatment as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. The evidence submitted on motion bears no direct relevance to that issue.

Because similar documentation was previously considered and the additional evidence submitted is, in any event, not directly relevant to any material issue in this matter, the Petitioner has not established that the evidence submitted on this motion would 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).

In the brief, the Petitioner claims that the proffered position qualifies a specialty occupation. However, the Petitioner's assertion does not follow from the facts of the case.

The Petitioner asserts that the evidence shows that it is growing and requires the Beneficiary's services. We do not contest that the Petitioner may be growing. We do not contest that the Petitioner may require the Beneficiary's services. However, those assertions are inapposite to whether the proffered position qualifies as a specialty occupation position.

The Petitioner further states: "Petitioner's requirements for this position are not so unusual, compared to other employers, that its business judgment as to the requirements for this position should be disregarded." However, to support the approval of an H-1B visa petition, the Petitioner must demonstrate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

As to that requirement, the Petitioner states:

The [U.S. Department of Labor's Occupational Outlook Handbook (*Handbook*)] provides that a bachelor's degree is 'typically required' for most logistician positions

and that many logisticians hold a bachelor's degree in business, industrial engineering (the degree held by the Beneficiary), process engineering or supply chain management. Inasmuch as this evidence establishes that a bachelor's degree is 'typically required' for the position of logistician, and that a degree in industrial engineering is typically held by many holders of such positions, a fair reading of the regulations and the facts applicable to this case makes clear that the proffered position is reasonably characterized as a specialty occupation since such a degree is more than a mere preference.

We recognize the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> As to the educational requirements of positions located within the logistician occupational category, the *Handbook* states:

Logisticians may qualify for some positions with an associate's degree. However, as logistics becomes increasingly complex, more companies prefer to hire workers who have at least a bachelor's degree. Many logisticians have a bachelor's degree in business, systems engineering, or supply chain management.

Bachelor's degree programs often include coursework in operations and database management, and system dynamics. In addition, most programs offer courses that train students on software and technologies commonly used by logisticians, such as radio-frequency identification (RFID).

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., "Logisticians," <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited May 23, 2016).

The *Handbook* indicates that an associate's degree is a sufficient educational qualification for entry into some logistician positions. This is sufficient reason, in itself, to find that positions located within the logistician category do not "normally" require a bachelor's degree.

Further, even as to those logistician positions that may require a minimum of a bachelor's degree, the *Handbook* makes explicit that a bachelor's degree in business may suffice. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree

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<sup>2</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. This is also, in itself, sufficient reason to find that logistician positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

For both reasons, the *Handbook* does not support the proposition that a logistician position normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, support the proposition that the proffered position is a specialty occupation position.<sup>3</sup>

The Petitioner's assertion that we "engrafted" the requirement that the position require a bachelor's degree in a specific specialty, or the equivalent, in order to merit classification as a specialty occupation, is not persuasive. As we explained in our prior decision, 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.<sup>4</sup>

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<sup>3</sup> Statements to this effect were made in the Director's decision denying the petition and in our decision dismissing the appeal.

<sup>4</sup> The Petitioner did not address our analysis of this issue on motion.

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 when the decision to deny the motion was rendered, and the Petitioner has not established that the decision was incorrect based on the evidence of record at the time of the initial decision. The Petitioner has therefore not submitted evidence or assertions 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 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 E-P-F-S-, LLC*, ID# 17378 (AAO May 24, 2016)