U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-H-H-S-, INC.

DATE: NOV. 3, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a home health care provider, seeks to extend the Beneficiary's temporarily employment as a "medical and health services 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 Petitioner appealed the denial, which we dismissed on the basis that the Petitioner had not established that the proffered position qualifies as a specialty occupation. The Petitioner filed three motions to reopen and motions to reconsider, all of which we denied.

The matter is once again before us on another combined motion. In its combined motion, the Petitioner submits new evidence to support its assertion that the proffered position qualifies as a specialty occupation. We will deny the instant motions.

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, 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:[1]

> **Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence.

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 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.

[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 [Department of Homeland Security] must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 C.F.R. chapter 1 to the contrary, such instructions are incorporated into the regulations requiring its submission."

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. DISCUSSION

For the reasons discussed below, the motion to reopen and motion to reconsider will be denied.

A. Discussion of Motion to Reopen

In support of its motion to reopen, the Petitioner asserts that it has "met the burden of proof by furnishing additional and new evidence not previously presented to show the continuous business growth, such as new affiliation provider participation agreement." The Petitioner states that these newly provided documents "should be considered of significance to establish the responsibilities and functions of a Medical and Health Services Manager position in relation to the Petitioner's business expansion plans, which are sufficiently complex to require the services of a baccalaureate degree." The "new evidence" submitted with the motion to reopen are the Petitioner's projected income statement and census reports for 2016.[2]

While the newly submitted documents technically present "new facts" regarding the Petitioner's business growth in 2016, the Petitioner still has not demonstrated how these new facts possess such significance that they would likely change the result in the case. *See Matter of Coelho*, 20 I&N Dec. at 473; *see also Maatougui v. Holder*, 738 F.3d at 1239-40. As we relayed in our August 15, 2016, decision, evidence dated after a petition's filing date does not establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1).

[2] All the other supporting documents submitted with this motion were previously submitted, and thus, do not provide any new facts. Although the Petitioner claims to have submitted a "new affiliation provider participation agreement," a new affiliation agreement was not submitted with the instant motion. We assume that the Petitioner is referring to the affiliation agreement previously submitted with its prior motion to reopen and motion to reconsider, which we already addressed in our prior decision.

Moreover, the Petitioner has not sufficiently articulated these documents' relevance to the instant motion to reopen. The Petitioner explains that it is submitting these new documents in an attempt to demonstrate its continued business growth and expansion plans. But we have not previously questioned the continued growth of the Petitioner's business operations. And while the Petitioner claims these documents directly demonstrate "the responsibilities and functions of a Medical and Health Services Manager position," they neither mention the Beneficiary individually nor the role of the proffered position. Nor is it self-evident that, from the Petitioner's continued business growth alone, that the proffered position necessarily "requires the services of a baccalaureate degree." At most, these documents merely complement existing record evidence of the Petitioner's business growth (e.g., the Petitioner's affiliation agreement, tax returns, and census report for prior years), which has already been presented and considered insufficient in prior proceedings.

As the Petitioner as not demonstrated how the newly submitted documents would change the outcome of this case even if these proceedings were reopened, we will deny the motion to reopen.

B. Discussion of Motion to Reconsider

In its brief in support of the motions, the Petitioner explains why the proffered position qualifies as a specialty occupation for the same reasons stated in prior proceedings. The Petitioner also resubmits copies of documents which were previously submitted and considered in prior proceedings.

However, the issue here is strictly limited to whether our immediate prior decision, dated August 15, 2016, was incorrect. The scope of the instant motion cannot be expanded to consider whether any of our other decisions were incorrect. Here, the Petitioner's motion to reconsider reiterates previously made arguments, but it does not specifically articulate how our August 15, 2016, decision was based on an incorrect application of law or policy. As stated above, the reiteration of previous arguments or general allegations of error will not suffice for a motion to reconsider. *See Matter of O-S-G-*, 24 I&N Dec. at 60. *See also Matter of Medrano*, 20 I&N Dec. at 219; *Martinez-Lopez v. Holder*, 704 F.3d at 171-72.

The documents constituting this motion do not articulate how our decision, dated August 15, 2016, misapplied any pertinent statutes, regulations, or precedent decisions to the evidence of record when the decision to deny the combined motion was rendered. Accordingly, the 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 (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 C-H-H-S-, Inc.*, ID# 154509 (AAO Nov. 3, 2016)