U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

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

DATE: FEB. 23, 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 continue to employ the Beneficiary as a "medical and health services manager" under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. We dismissed the appeal and denied a subsequent combined motion to reopen and reconsider. The matter is again before us on a combined motion to reopen and reconsider. The motion will be denied.

I. LEGAL FRAMEWORK

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 our 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 submission of a Form I-290B, Notice of Appeal or Motion, 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 that establish eligibility at the time the underlying petition or application 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: "**Motion to Reconsider**: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions 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,

[1] The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

> Each 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.

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

The submission constituting the combined motion to reopen and reconsider consists of the following: (1) the Form I-290B; (2) the Petitioner's brief in support of the motion; (3) a letter dated August 18, 2015, from the Petitioner that restates the proffered duties as previously provided; (4) copies of the Beneficiary's prior approval notices and pages from the Beneficiary's passport; (5) an Occupational Information Network (O*NET) summary report and a printout from the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) for medical and health services managers; (6) documents regarding the Beneficiary's credentials; and (7) a copy of the decision *Warren Chiropractic & Rehab Clinic, P.C. v. USCIS*, No. SACV 14-0964 AG (RNBx), 2015 WL 732428 (C.D. Cal. 2015) (*Warren Chiropractic*).

A. Motion to Reopen

While the Petitioner has provided some documents as described above, the Petitioner has not presented any evidence that could be considered "new facts." Further, even if the documents could be considered as "new facts," the Petitioner has not established that the new facts possess such significance that they could change the outcome of the adjudication.

We note that the Petitioner does not adequately address our prior finding that the proffered position's duties are not those typically performed by a medical and health services manager, but rather are consistent with the duties of a registered nurse position as described in the *Handbook*. Moreover, the Petitioner has not presented any evidence to refute that finding.

Overall, it is not readily apparent how the newly submitted documentation would change the outcome of this case if the proceeding were reopened. *See Matter of Coelho*, 20 I&N Dec. at 473 (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"); *see also Maatougui v. Holder*, 738 F.3d at 1239-40.

"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. at 94). 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 heavy burden.

B. 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 U.S. Citizenship and Immigration Services (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 motion, the Petitioner cites to *Chung Song Ja Corp. v. U.S. Citizenship and Immigration Services,* No. C14-0177RSM, 2015 WL 1058110 (W.D. Wash. 2015) and *Warren Chiropractic* for the proposition that a medical and health services manager is a specialty occupation. However, we note that, as discussed previously, we did not find that the proffered position is that of a medical and health services manager, but instead is that of a registered nurse. Therefore, the facts of the instant petition are not analogous to those in *Chung Song Ja Corp.* and *Warren Chiropractic & Rehab Clinic*. Further, even if the Petitioner could demonstrate, which it did not do, that the proffered position is that of a medical and health services manager, we also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

The Petitioner's stated reasons for reconsideration are insufficient to establish that our decision was incorrect. In the motion brief, the Petitioner asserted that the proffered position qualifies as a specialty occupation for the same reasons stated in prior proceedings. The Petitioner did not articulate how our July 27, 2015, decision that rejected these arguments was based on an incorrect application of law or policy. As previously discussed, the reiteration of previous arguments or general allegations of error will not suffice. The Petitioner 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. As the Petitioner did not properly state the reasons for reconsideration, the motion to reconsider must also 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.

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# 15580 (AAO Feb. 23, 2016)