



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

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

In Re: 10066004

Date: JULY 24, 2020

Motion of Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (H-1B)

The Petitioner, a biopharmaceutical manufacturing company, seeks to temporarily employ the Beneficiary as a “quality assurance lot review specialist II” 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 of the Vermont Service Center denied the petition, concluding that the evidence of record does not establish that the proffered position qualifies as a specialty occupation. We dismissed the subsequent appeal concluding that the Petitioner did not demonstrate that the proffered position qualifies as a specialty occupation.

The matter is before us on a combined motion to reopen and motion to reconsider. In the combined motions, the Petitioner contends that the proffered position qualifies as a specialty occupation. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motions.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy, and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

II. ANALYSIS

The Petitioner's motions do not meet the motion requirements; therefore, we will dismiss the motions.

A. Motion to Reopen

In support of the motion, the Petitioner submits a brief explaining why it believes that the proffered position qualifies as a specialty occupation. Notably, the Petitioner's motion restates the arguments it made in its appeal.¹ Reasserting previously stated facts does not constitute "new facts." The Petitioner also submits a letter signed by four of its senior staff, job advertisement placed by other employers, and evidence it previously provided.² In the letter, the "Head of Quality Assurance (QA) Operations" recites her qualifications, provides information regarding the Petitioner's business operations and the quality team, and discusses the Beneficiary's training and experience. However, the letter does not discuss new relevant facts that demonstrate the position's specialization and complexity. Furthermore, while the author states that the position requires a bachelor's degree "preferably in Life Sciences field of study" and that the members of the quality team complete "highly specific and technical training to demonstrate proficiency in the role before performing job functions independently," she does not provide new relevant facts to demonstrate how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. With regards to the Beneficiary's training and experience, we note that the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. We follow long-standing legal standards and determine first, whether the proffered position qualifies for classification as a specialty occupation, and second, whether the Beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. Cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). Here, as discussed in our decision of the appeal, the Petitioner has not established that its requirements satisfy the requirements of a specialty occupation.

With respect to job advertisements placed by other employers, we have discussed the deficiencies of such advertisements in our decision of the appeal. The Petitioner does not address these deficiencies on motion. Rather, it merely submits more job advertisements, but does not discuss how these job advertisements submitted on motion establish that the degree requirement in a specific specialty is common in the industry in parallel positions among similar organizations.

The record on motion does not include new facts that demonstrate the proffered position qualifies as a specialty occupation. Therefore, the Petitioner has not shown proper cause to reopen the proceeding.

¹ Notably, the Petitioner's motion brief is virtually verbatim of its appeal brief.

² We note that while the letter was signed by four of the Petitioner's senior staff, the author of the letter did not sign the letter. Furthermore, in its brief, the Petitioner asserts that "the initial evidence coupled with the newly submitted expert opinion satisfy the criterion at 8 C.F.R. § 214.2(4)(iii)(A)(4)." However, the record does not contain a new expert opinion submitted in support of the motion.

B. Motion to Reconsider

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Further, a motion to reconsider must be supported by pertinent authority.

Here, the Petitioner does not state specific reasons for reconsideration but rather repeats its previous arguments without discussing or offering an analysis of how the previous decision was based on an incorrect application of law or policy. Moreover, the record on motion does not establish how our decision was incorrect based on the evidence of record at the time of the initial decision. The Petitioner has not provided a legal basis to reconsider the previous decision. Therefore, the Petitioner has not shown proper cause for reconsideration.

III. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause to reopen the proceeding or proper cause for reconsideration.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.