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U.S. Department of Homeland Security

Citizenship and Immigration Services

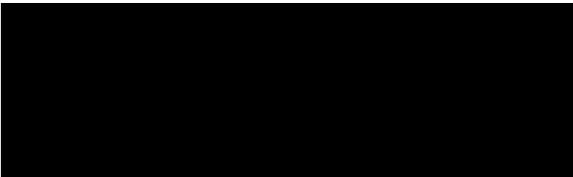
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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 I Street, N.W.

Washington, D.C. 20536



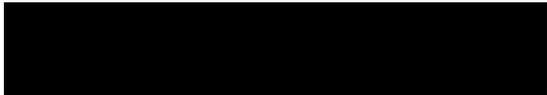
File: SRC 02 240 50457

Office: TEXAS SERVICE CENTER

Date:

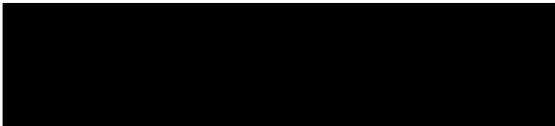
DEC 30 2003

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal on January 24, 2003. The petitioner filed a motion to reopen and reconsider with a brief on February 26, 2003, indicating that additional documentation would be submitted. The AAO dismissed the motion to reopen and reconsider, indicating that the petitioner had failed to submit additional documentation. The petitioner filed a second motion to reopen and reconsider, asserting that the petitioner had submitted three supplements in support of its initial motion to reopen and reconsider. The matter is now before the AAO on the second motion to reopen and motion to reconsider. The motion will be dismissed.

The petitioner is a medical school, seeking a continuation of O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of one year as an assistant professor of surgery, and as the initial director of a new wound care, burn management, and trauma center.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one among a small percentage at the very top of the wound and burn care management field.

On appeal, counsel for the petitioner asserted that the record shows that the beneficiary is an alien with extraordinary ability in his field.

The AAO dismissed the appeal, finding that the petitioner had failed to establish that the beneficiary satisfies at least three of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii).

On motion, the petitioner asserts that it submitted three supplements in support of its initial motion to reopen and reconsider. Counsel for the petitioner provided evidence that it had sent correspondence to the director on June 12, 2003 and on June 30, 2003, on behalf of the petitioner. Counsel asserts that it also submitted evidence on July 9, 2003. In review, the evidence shows that counsel for the petitioner sent correspondence to the director regarding the beneficiary on June 12, 2003 and on June 30, 2003. There is insufficient evidence to establish that the petitioner sent correspondence on July 9, 2003, on behalf of the beneficiary. Nonetheless, the AAO has reviewed all of the evidence on the record, including two motions to reopen and reconsider; and *all three* supplemental submissions.

8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

On motion, the petitioner has submitted evidence relating to five of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii).

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). The petitioner has provided a press release dated May 29, 2003; an article published in the *Johnson City Press* on June 1, 2003; a news release dated October 29, 1998; a copy of the May 14, 2003 letter from the American Academy of Wound Management [Academy], congratulating the beneficiary on passing the Board Examination in Wound Management; an invitation dated May 14, 2003 to review the qualifications of applicants to the Academy; a letter dated May 30, 2003 informing the beneficiary that one of his articles had been accepted for publication; a letter dated June 30, 2003 from the Academy thanking the beneficiary for his participation on the examination committee for the Academy; evidence of a referral of a patient to the beneficiary; a copy of an article citing one of the beneficiary's published articles; a letter of support dated June 25, 2003; copies of published articles co-authored by the beneficiary; a copy of an announcement of a meeting held on June 2, 2003 concerning a clinical research project in which the beneficiary is identified as the moderator;

The evidence submitted was either previously available and could have been discovered or presented in the previous proceeding, or it post-dates the filing of the petition and may not be considered. 8 C.F.R. § 103.2(b)(12). See also *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248 (Reg. Comm. 1978).

On review, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are 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

¹ The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>" WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984) (emphasis in original).

U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

Furthermore, 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and 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, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Here, the petitioner failed to cite any precedent decisions in support of a motion to reconsider. The petitioner does not argue that the previous decisions were based on an incorrect application of law or CIS policy. The petitioner's motion will be dismissed.

Finally, it should be noted for the record that, unless CIS 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).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.