U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 0 3 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: PETITIONER:
BENEFICIARY:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on September 24, 2010. The Administrative Appeals Office (AAO) entered a finding that the petitioner willfully misrepresented a material fact, and failed to meet the minimum eligibility requirement necessary to qualify for the employment-based immigrant visa on June 18, 2012. The matter is now before the AAO on a motion to reopen and reconsider, filed on July 18, 2012. The motion will be dismissed. The previous decision of the AAO will be affirmed, and the petition will remain denied.

I. Requirements of a Motion

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) informs the public of the filing requirements for a motion and provides in subsection (C) that a motion shall be submitted on Form I-290B and it must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding."

On motion, counsel has failed to submit a statement indicating if the validity of the AAO's June 18, 2012 unfavorable decision has been or is the subject of any judicial proceeding pursuant to the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4) without regard to the claims contained within the motion.

II. Motion to Reopen and Reconsider

A party seeking to reopen a proceeding bears a heavy burden and "must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2). Based on its discretion, "the INS [now the U.S. Citizenship and Immigration Services (USCIS)] has some latitude in deciding when to reopen a case. [USCIS] should have the right to be restrictive. Granting such motions too freely will permit endless delay of deportation by aliens creative and fertile enough to continuously produce new and material facts sufficient to establish a *prima facie* case." *INS v. Abudu*, 485 U.S. 94, 108 (1988). The result also needlessly wastes the time and efforts of the triers of fact who must attend to the filing requests. *Id.*

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the original decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60. In essence, a motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

On motion, counsel has filed a Form I-290B and a letter, dated July 17, 2012. According to the letter, counsel files the motion because "[a]ttorneys for [the petitioner] did not receive a copy of the ITD [the AAO's notice of intent to dismiss]" and because "[t]he 15 days granted in [the notice of intent to dismiss] was an arbitrary amount of time chosen by the AAO." The motion is dismissed for the following reasons.

First, the motion to reopen is dismissed because counsel has provided no affidavits or other documentary evidence in support of the motion. Specifically, the regulation at 8 C.F.R. § 103.5(a)(2) provides that to meet the requirements of motion to reopen, the petitioner "must state the new facts to be provided in the reopened proceeding and *be supported by affidavits or other documentary evidence*." (Emphasis added.) Although counsel claims in his letter that he did not receive AAO's May 2, 2012 notice of intent to dismiss, he has provided neither affidavits nor other documentary evidence to support his claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, there is a presumption of effective service and receipt of the notice because there is a presumption that the United States Postal Service properly performed its duties, when, as in this case, the notice of intent to dismiss was properly addressed to both the petitioner and counsel, stamped and mailed. *See Lopes v. Mukasey*, 517 F.3d 156, 159-60 (2d Cir. 2008) (the presumption of receipt in regular mail cases "shift[s] a tie-breaking burden of proof to the alien claiming non-receipt"); *see also Modzelewski v. Holder*, 402 F. App'x 654, 656 (2d Cir. 2010); *Matter of M-R-A-*, 24 I&N Dec. 665, 671-73 (BIA 2008). The petitioner has not overcome the presumption of effective service and receipt, as neither he nor his counsel has provided any evidence, including affidavits, to the contrary. Finally, the notice of intent to dismiss was sent to both the petitioner and counsel. Although counsel asserts in his July 17, 2012 letter that "[a]ttorneys for [the petitioner] did not receive a copy of [the notice of intent to dismiss]," counsel does not assert, and has not provided any evidence showing, that the petitioner similarly did not receive a copy of the notice.

Second, the motion to reconsider is dismissed because counsel has failed to establish through pertinent precedent decisions, applicable law or applicable USCIS policy that the AAO's June 18, 2012 decision was made in error. Counsel asserts in his July 17, 2012 letter that the "15 days granted [in the notice of intent to dismiss] was an arbitrary amount of time chosen by the AAO." Counsel, however, has cited no legal support for his assertion. As noted in the AAO's May 2, 2012 notice of intent to dismiss, the regulation at 8 C.F.R. § 103.2(b)(16)(i) does not specify the amount of time afforded to a petitioner to respond to derogatory evidence, and the AAO considers 15 days to be ample time for this purpose. Indeed, *Matter of Obaigbena*, 19 I&N Dec. 533, 536 (BIA 1988), holds that the 15-day time limit for submitting a response to a notice of intent to dismiss is reasonable. Specifically, the case provides:

> The regulations do not prescribe any time limits for the issuance of a notice of intention to deny a visa petition or for the submission of a rebuttal to such a notice of

> intention to deny . . . . Similar regulations governing the time limits for responding to adverse Service [director] decisions, such as filing appeals from a decision denying a visa petition or from a decision revoking the approval of a visa petition, impose a 15-day deadline after the service of the notification of the decision. *See* 8 C.F.R. §§ 204.1(a)(3), 205.2(b) (1988). [The Board of Immigration Appeals] therefore do[es] not find that the imposition of a 15-day time limit for submitting a rebuttal to a notice of intention to deny, per se, is unreasonable.

Id. Moreover, the record does not support counsel specific assertion that the petitioner required more than 15 days to rebut the derogatory information provided by the AAO in its May 2, 2012 notice because the petitioner would need to obtain affidavits from individuals in China. The derogatory information involved a letter from , president of the located in Maryland and the results of a competition in Maryland. Counsel has not explained why affidavits from individuals in China are necessary to explain the discrepancies within the evidence from U.S. entities.

Finally, in its June 18, 2012 decision, in addition to the finding that the petitioner willfully misrepresented a material fact, the AAO dismissed the petitioner's appeal based on the alternative ground that the petitioner failed to demonstrate her receipt of a major, internationally recognized award, or that she met at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. *See* 8 C.F.R. § 204.5(h)(3). The instant motion fails to address or challenge the AAO's alternative finding. Instead, counsel states in his July 17, 2012 letter that the "[p]etitioner is in the process of obtaining affidavits and certified translations of extensive documentation of [her] sustained national and international acclaim." A motion must meet the regulatory requirements of a motion to reopen or reconsider at the time it is filed. No provision exists for USCIS to grant an extension to counsel or the petitioner to file evidence or arguments in the future. *See* 8 C.F.R. § 103.5(a)(1)(i).

In conclusion, the motion to reopen and reconsider is dismissed because counsel has failed to submit a statement regarding any judicial proceeding relating to the validity of the AAO's June 18, 2012 unfavorable decision and because the filing does not meet the requirements of a motion to reopen or reconsider.

ORDER: The motion is dismissed, the decision of the AAO dated June 18, 2012 is affirmed, and the petition remains denied.