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: MAR 0 8 2013 Office: TEXAS SERVICE CENTER

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 January 19, 2012. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on November 3, 2012, with a full discussion of the claimed criteria. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be dismissed. The motion to reconsider will be dismissed. Ultimately, the previous decision of the AAO will be affirmed, and the petition will remain denied.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion 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." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed. In this case, the petitioner failed to submit a statement regarding if the validity of the decision of the AAO has been or is subject of any judicial proceeding. As such, the motions must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

In this instance, the petitioner presents the basis of his motion within Part 3 of the Form I-290B. However, the petitioner does not address the AAO's most recently issued decision. Rather, the petitioner focuses on the issues contained in the service center director's original decision, asserting that the "service center erred" and that the "service center committed reversible error." As an example of this error, the petitioner asserts that "preexisting, independent and objective evidence" is not a lawful requirement. That quote, however, appears in the director's decision, not the AAO's decision. In fact, Part 3 of the motion Form I-290B repeats word for word the assertions on the Form I-290B of the petitioner's appeal. 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). The moving party must specify the factual and legal issues raised on appeal that the AAO decided in error or overlooked in the appellate decision or must show how a change in law materially affects the appellate decision. *Id.* Thus, the motion to reconsider must be dismissed.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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] 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 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 petitioner has not met that burden.

---

[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).

In support of the motion to reopen, the petitioner submits the same personal statement that he previously submitted in response to the director's request for evidence. This statement is not "new" evidence. Similarly, the petitioner submits other previously submitted evidence that is not "new." In addition, the petitioner submits a Certificate of Recognition relating to a July 2011 event. Not only does this certificate predate the petitioner's February 22, 2012 appeal such that it is not "new," it also relates to an achievement after the petition's date of filing. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Further, the petitioner submitted an October 5, 2011 letter from . As this letter predates the appeal, the petitioner does not explain why this letter is "new" evidence. The petitioner also submits a March 16, 2012 letter from , but does explain why he was previously unable to obtain a letter from this individual. Finally, the petitioner submits a November 20, 2012 letter from . This letter, however, is identical to a letter from dated March 18, 2012 that the petitioner submitted previously. Thus, this letter is not "new" evidence. In light of the above, the petitioner's motion to reopen must be dismissed.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (citing *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)). Here, the petitioner has not sustained that burden.

ORDER: The motion to reopen is dismissed. The motion to reconsider is dismissed. The decision of the AAO dated November 3, 2012, is affirmed, and the petition remains denied.