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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 10 2014 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. Subsequently, the petitioner filed a motion to reopen and reconsider. The AAO dismissed the motion to reconsider, granted the motion to reopen, and affirmed its prior decision. The petitioner filed a second motion to reopen. The AAO granted the motion and affirmed the dismissal of the appeal. The petitioner filed a third motion to reopen. The AAO dismissed the motion and affirmed its prior decision. The petitioner filed a fourth motion to reopen. The AAO granted the motion to reopen and affirmed its prior decision. The petitioner filed a fifth motion to reopen. The AAO granted the motion and affirmed its prior decision. The matter is now before the AAO again on a sixth motion to reopen. The motion will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences and as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualified for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

According to 8 C.F.R. § 103.5(a)(2), 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. 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.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 23, 2010. The director found that the petitioner's work as a physician in the field of medical oncology was in an area of substantial intrinsic merit. However, the director, in denying the petition, determined that the petitioner had not established that the benefit arising from his intended future employment would be national in scope. The director concluded that the petitioner's "impact will be limited to the hospital in which he will practice; therefore, the benefit of his skills will be limited to a small area." The director also determined that the petitioner had not established that he would benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Our previous decisions have upheld the director's findings.

In our most recent decision, we again determined the petitioner had failed to establish that the benefits of his work would be national in scope and that he would benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

With the current motion, the petitioner submits a letter contesting our previous decision. The petitioner points to evidence submitted in support of the prior motion and asserts that the "work began before – and continued throughout – the time in which the petition was originally filed." The petitioner's December 6, 2013 article in entitled " an update" and his November 19, 2013 grant approval from the , however, post-date the filing of the Form I-140

petition on June 23, 2010. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Accordingly, the published article in and the $5,000 grant from the cannot be considered as evidence to establish the petitioner's eligibility at the time of filing. Furthermore, there is no documentary evidence supporting the petitioner's assertion that the aforementioned work "began before" the petition was filed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner has not submitted evidence establishing that the work he was engaged in or had completed at the time of filing on June 23, 2010 had benefits that were national in scope. In addition, the petitioner has failed to demonstrate that his work had already influenced the field as a whole at the time of filing.

The petitioner's instant motion does not provide any new facts to provide a basis for reopening the petition, and it is unsupported by affidavits or other documentary evidence. Additionally, the petitioner's motion does not overcome the grounds underlying our previous findings.

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.

The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, for the aforementioned reasons, the motion is dismissed. This decision is issued without prejudice to the filing of a new visa petition. If the petitioner has now gathered evidence of eligibility that cannot be considered on appeal or motion, he is free to submit the documentation within the context of a new petition.

ORDER: The motion to reopen is dismissed, our decision dated March 19, 2014 is affirmed, and the petition remains denied.