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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

[redacted]

D9

DATE: MAY 16 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) dismissed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The AAO will grant the motion to reopen and affirm the dismissal of the appeal.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiaries as internationally-recognized athletes under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner, a Chinese martial arts teaching and performance company, seeks to employ the beneficiaries as martial arts athletes for a period of one year.

The director denied the petition, concluding that the petitioner failed to submit a consultation from an appropriate labor organization evaluating the beneficiaries' culturally unique skills. The director noted that the letter submitted by American Guild of Variety Artists (AGVA) does not qualify as an appropriate labor organization.

The petitioner subsequently filed an appeal. The AAO dismissed the petitioner's appeal on November 17, 2011, and affirmed the denial of the petition for the first reason set forth by the director and articulated a second independent reason for denial, that is, that the petitioner failed to establish that the beneficiaries' performance, and the specific artistic or entertainment events for which their services are sought, are culturally unique.

The petitioner filed the instant motion to reopen on December 20, 2011. On the Form I-290B, Notice of Appeal or Motion, the petitioner states:

> United States Citizenship and Immigration Services (USCIS) officers issued different and inconsistent decisions regarding the consultation provided by the AVGA . . . we respectfully request the AAO issue an opinion whether or not the AGVA is a labor organization in the field of Chinese martial arts, and whether its consultation is acceptable for USCIS.

The petitioner fails to provide any new evidence or a consultation that meets the regulatory requirements. Although the petitioner acknowledges the AAO's dismissal of the petitioner's appeal, the brief contains no direct reference to the specific findings made in the AAO's decision issued on November 17, 2011. Rather, counsel essentially requests that the AAO conduct a *de novo* review of the record. Furthermore, counsel does not refer to the second independent grounds of denial articulated by the AAO.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

> 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.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

> 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 [U.S. Citizenship and Immigration Services (USCIS)] 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.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "A motion that does not meet applicable requirements shall be dismissed."

The instant motion makes no reference to the findings made in the AAO's decision and the specific deficiencies remarked upon therein, no new facts provided to support a motion to reopen, and no specific reasons stated for reconsideration. Accordingly, the motion will be dismissed for failing to meet the applicable requirements.

The purpose of a motion to reopen or motion to reconsider is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a motion to reopen is strictly limited to an examination of any new facts, which must be supported by affidavits and documentary evidence. A motion for reconsideration must state the reasons for re-consideration and be supported by pertinent precedent decisions establishing that the decision was based on an incorrect application of law or USCIS policy. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated.

Rather, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts or documented sufficient reasons, supported by pertinent precedent decisions, to warrant the re-opening or reconsideration of the AAO's decision issued on November 17, 2011.

In addition, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions 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." The petitioner's motion does not contain this statement. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See 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 movant has not met that burden.

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's 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.

ORDER: AAO's decision of November 17, 2011 is affirmed. The petition remains denied.