

identity of individuals and
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

FILE:

[REDACTED]
LIN 04 225 50217

Office: NEBRASKA SERVICE CENTER

Date: OCT 14 2009

IN RE:

Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

This is the decision of the Administrative Appeals Office 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 you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

U Deadrick
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied this employment-based immigrant visa petition on September 15, 2005. The Administrative Appeals Office (AAO) denied the petitioner's appeal of that decision on September 1, 2006 and dismissed a subsequent motion to reopen on October 25, 2007. The petitioner's second motion to reopen and reconsider was dismissed as untimely filed. The matter is now before the AAO on a third motion to reopen. The motion will be granted and the October 25, 2007 decision of the AAO will be affirmed.

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). 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 (USCIS) policy. 8 C.F.R. § 103.5(a)(3).

Counsel asserts that the petitioner's second motion was timely filed with the Nebraska Service Center (NSC) on November 27, 2007. The petitioner submits an affidavit from [REDACTED] an attorney requested by counsel to "interface" with [REDACTED] for delivery of the petitioner's motion to the NSC. [REDACTED] certified that he gave the package containing the petitioner's motion to [REDACTED] on November 27, 2007 for delivery to the NSC. [REDACTED], the regional manager for [REDACTED] certified in a December 3, 2007 letter that his company picked up a package from [REDACTED] and delivered it to the NSC at 3:15 p.m. on November 27, 2007. The petitioner submitted a copy of a receipt from [REDACTED] confirming the receipt of a package from [REDACTED] at 2:45 for delivery to "[REDACTED]" in Lincoln, Nebraska.

We find such contemporaneous evidence sufficient to establish that the motion was timely filed with the NSC.

Nonetheless, the petitioner failed to cite any precedent decisions in support of his motion to reconsider and did not argue that the previous decisions were based on an incorrect application of law or USCIS policy. Therefore, he failed to establish a ground to reconsider the AAO's October 25, 2007 decision.

Regarding the additional arguments made by counsel in his first motion, counsel stated that the petitioner qualifies for this visa petition because as coach of a "gold medal winning team in the Winter Asian Games," he is the recipient of a major, internationally recognized award. We note that this motion was the first time counsel raised this argument to the Service. In the AAO's October 25, 2007 decision, incorporated here by reference, the AAO acknowledged that gold medals awarded to individuals coached by the petitioner were sufficient to warrant a finding that the petitioner met the lesser awards criterion under 8 C.F.R. § 204.5(h)(3)(i). The AAO also noted that the petitioner's role as a coach of the Korean National Team qualified him under the leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). However, regarding counsel's reference to a "gold medal winning team," the AAO found:

The record [] contains no evidence showing that the Korean National Team, as a whole, earned a “team” gold medal at the Winter Asian Games as implied by counsel. Rather, one athlete who competed for the Korean National Team, [REDACTED], won gold medals in the two individual events in which he participated (the 1,000-meter and the 1,500 meter races).

In support of his subsequent motions, the petitioner failed to submit any additional evidence to establish that the Korean National Team, as a whole, was awarded a medal at this competition.

The AAO also discussed the legislative history of this highly restrict classification, stating:

Given Congress’ intent to restrict this category to “that small percentage of individuals, who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rpt. 101-723, 59 (Sept. 19, 1990). The House Report specifically cited to the Nobel Prize as a one-time achievement. *Id.* We note that Nobel Laureates are selected from a global pool of nominees, are reported in major media internationally regardless of nationality, and receive substantial monetary awards. While a major award could constitute a one-time achievement without having all the elements of a Nobel Prize, the House Report and the regulation clearly show that the award must be internationally recognized as one of the top awards in the alien’s field.

The AAO then determined that the petitioner failed to establish the level of international recognition associated with the 2003 Winter Asian Games, noting that the competition was “a regional international competition . . . rather than a global competition such as the Olympics” and, therefore, its awards were not “major, internationally recognized awards.”

In support of his November 28, 2007 motion to reopen, the petitioner provided letters from the Director General of the Olympic Council of Asia, the National Sprint Team Coach and the U.S. Track Speed Skating National Team Head Coach of the U.S. Speedskating Team, stating that the Asian Winter Games is a major, internationally recognized event. The petitioner submitted no evidence, however, that winners of the Asian Winter Games, a qualifying event for the Olympic Games, are reported in top international media or that the Asian Winter Games is a name familiar to the international public. The petitioner’s evidence therefore failed to establish that medals at the Asian Winter Games are major, internationally recognized awards.

Finally, regarding our finding that that the petitioner had failed to establish his sustained acclaim, the petitioner submitted evidence of “the outstanding achievements of the skaters he coached in the U.S. National Long Track Speed Skating Championship 2007.” However, the accomplishments of the petitioner’s students that occurred subsequent to the filing date of his petition on August 2, 2004 are not evidence of his eligibility for this criterion. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the

petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Although we have overturned our prior decision regarding the timeliness of the petitioner's motion, for the reasons set forth above, the petitioner has failed to establish receipt of a major, internationally recognized award or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion to reopen is granted and the decision of the AAO dated February 2, 2009 is withdrawn. The decision dated October 25, 2007 is affirmed and the petition is denied.