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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
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FILE: [REDACTED]
LIN 07 174 51243

Office: NEBRASKA SERVICE CENTER

Date: MAR 18 2010

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)

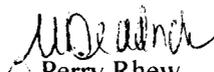
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied this employment-based immigrant visa petition on May 20, 2008. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on June 23, 2009. The matter is now before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

On motion, the petitioner states that she agrees with the decision of the AAO except for the leading or critical role criterion (8 C.F.R. § 204.5(h)(3)(viii)). The petitioner attempts to "clarify [her] role for [our] further understanding" pertaining to the Power Point presentation and website for the German National Tourist Office of New York. Further, the petitioner claims that her "role within the [REDACTED] must be considered artistic as well as critical." In support of her claims, the petitioner submitted a letter from [REDACTED] and an email from [REDACTED] on Ghosts of the Baltic Sea.

We note here that while the petitioner did not specifically challenge on motion the lesser nationally or internationally recognized awards or prizes criterion (8 C.F.R. § 204.5(h)(3)(i)), the petitioner also submitted a website page from www.theamericanvirtuosi.com regarding [REDACTED] along with two documents in the German language without full English language translations as required by the regulation at 8 C.F.R. 103.2(b)(3).

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

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). In addition, the petitioner failed to explain why the evidence was previously unavailable and could not have been submitted earlier. The petitioner has been afforded three different opportunities to this submit evidence: at the time of the original filing of the petition on June 1, 2007, in response to the director's request for additional evidence on February 28, 2008, and at the time of the filing of the appeal on June 17, 2008. A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2) and, therefore, cannot be considered a proper basis for a motion to reopen.

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. The motion to reopen will be dismissed.

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).

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 dismissed, the decision of the AAO dated June 23, 2009, is affirmed, and the petition remains denied.