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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]
EAC 06 017 50733

Office: NEBRASKA SERVICE CENTER

Date: **MAR 25 2018**

IN RE:

Petitioner:
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 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).

M. Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied this employment-based immigrant visa petition on June 14, 2007. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on May 28, 2009. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

On motion, counsel provided the following additional evidence:

1. A letter from [REDACTED] of Young Asia Television, dated June 17, 2009;
2. Another letter from [REDACTED] dated January 6, 2009;
3. A declaration from the petitioner;
4. Pages from the internet regarding [REDACTED];
5. A press release from the International Federation of Journalists, dated June 17, 2009, entitled "Political Groups Must End Attacks on Journalists in Nepal";
6. Information regarding the Worldview International Foundation from www.wifoundation.net and www.worldviewimpact.com;
7. Brochures and website articles relating to Young Asia Television;
8. Website information regarding the Nobel Prize; and
9. An article regarding the UNICEF Japan prize awarded to the petitioner.

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). All evidence submitted was previously available and could have been discovered or presented in the previous proceeding. The only evidence that would not have been previously available (item 5) is not relevant to the petitioner's case. It is noted that the petitioner has submitted evidence with this motion that was originally requested by the director in a request for additional evidence dated August 22, 2006. *Matter of Soriano* 19 I&N Dec. 764 (BIA 1988), held that a petitioner may be put on notice of evidentiary requirements by regulations, written notice such as a request for additional documentation or a notice of intent to deny, or an oral request at an interview. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for a motion to reopen.

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).

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.

In the motion to reconsider, counsel reiterates the same arguments made in the original appeal and questions the AAO’s interpretation of evidence provided by the petitioner.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). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. Rather, the “additional legal arguments” that may be raised in a motion to reconsider should flow from new law or a de novo legal determination reached in its decision that may not have been addressed by the party. Further 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. Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. See *Matter of Medrano*, 20 I&N Dec. 216, 219 (BIA 1990, 1991).

In this case, counsel failed to support his motion with any precedent decisions or other such evidence to establish that the decision was based on an incorrect application of law or USCIS policy. The motion to reconsider will 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. Here, the petitioner has not sustained that burden.

ORDER: The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated May 28, 2009, is affirmed, and the petition remains denied.

² Note also that counsel for the petitioner incorrectly interpreted the AAO’s decision by stating that we acknowledged the petitioner’s receipt of a lesser nationally or internationally recognized prize. The AAO decision first clearly addresses whether the petitioner established that he sustained national or international acclaim through evidence of a one-time achievement under 8 C.F.R. § 204.5(h)(3), and found he did not. As he failed to establish a one-time achievement, it then “considered” his prizes under the ten criteria at 8 C.F.R. § 204.5(h)(3). However, the AAO decision concluded that the petitioner also failed to demonstrate his “receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.”