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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  
and Immigration  
Services

B2

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

**MAY 21 2010**

IN RE:

Petitioner:  
Beneficiary:

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)

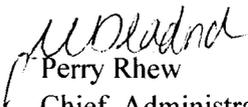
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Nebraska Service Center, denied this employment-based immigrant visa petition on November 20, 2008. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on October 19, 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 he filed the motion to reopen because "new evidences are present in support of [his] case." The petitioner submitted the following:

1. A recommendation letter, dated November 5, 2009, from [REDACTED]
2. A recommendation letter, dated November 1, 2009, from [REDACTED]
3. A recommendation letter, dated October 24, 2009, from [REDACTED]
4. A Certificate of Achievement for first place in the long range weapon spear at the [REDACTED] on April 5, 2005;
5. An Achievement Certificate for first prize at the First World Traditional WuShu Festival in [REDACTED]
6. A Certificate of Appreciation for the petitioner's participation at the 2<sup>nd</sup> International Traditional Kung Fu Wushu Tournament & Masters Exhibitions on [REDACTED]
7. An Achievement Certificate for the Second World Traditional WuShu Championship in [REDACTED]
8. A Certificate of Judging for the 17<sup>th</sup> Annual Chinese Martial Arts Tournament on [REDACTED]
9. A Commendation Certificate for the petitioner's performance at the 2008 Spring Festival Concert on [REDACTED]; and
10. A certificate from the International Wushu Sanshou Dao Association awarded 4<sup>th</sup> degree black belt to the petitioner on [REDACTED]

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.<sup>1</sup>

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). The petitioner failed to explain why he could not have previously submitted recommendation letters from [REDACTED] or [REDACTED]. Furthermore, regarding items 4 – 6, the petitioner failed demonstrate why the documentation was

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<sup>1</sup> 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).

previously unavailable and could not have been submitted earlier as the evidence reflects events occurring prior to the filing of the petition.

We note here regarding item 7, the Achievement Certificate is both in the English and Chinese languages. However, the athlete's name, event, and achievement are only in the Chinese language. The record fails to reflect that the petitioner received this award. Furthermore, the petitioner failed to submit a certified English language translation pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), which requires that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Because the petitioner failed to comply with 8 C.F.R. § 103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In addition, regarding items 8 – 10, the petition was filed on November 15, 2007. These items reflect events occurring after the filing of the petition. Eligibility must be established at the time of filing. Therefore, we will not consider these items as evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 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 we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

The petitioner has been afforded three different opportunities to submit this evidence: at the time of the original filing of the petition on November 15, 2007, in response to the director's request for additional evidence on September 17, 2008, and at the time of the filing of the appeal on December 19, 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.

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 October 19, 2009, is affirmed, and the petition remains denied.