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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

PUBLIC COPY



B₂

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

JAN 19 2011

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:

SELF-REPRESENTED

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 \$630. 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,

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied this employment-based immigrant visa petition on May 3, 2008. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on July 7, 2009. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

In order to properly file a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must 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 and, if so, the court, nature, date, and status or result of the proceeding." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed. In this case, the petitioner failed to submit a statement regarding if the validity of the decision of the AAO has been or is subject of any judicial proceeding. As such, the motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

Notwithstanding the above, in the decision of the AAO dismissing the petitioner's original appeal, the AAO found that the petitioner failed to establish that he meets at least three of the regulatory criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Specifically, the AAO found that the petitioner failed to establish eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). In fact, the AAO found that the petitioner failed to establish eligibility for any of the criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Moreover, the AAO found that the petitioner failed to establish his intent to continue to work in the United States in his area of expertise pursuant to the regulation at 8 C.F.R. § 204.5(h)(5). In making the determination regarding the petitioner's failure to establish his intent to continue work in the United States, the AAO noted discrepancies in the petitioner's evidence and indicated that it is the petitioner's burden to resolve any such discrepancies.

On motion, the petitioner claimed that he "discovered many inappropriate considerations and significantly and incorrectly lowering of importance of events, terms and even whole national team." However, the petitioner statement only addresses the findings of the AAO regarding the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i) and the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Therefore, even if the petitioner were to prevail on those issues, which he does not, such a conclusion would not overcome our ultimate conclusion that the petitioner does not meet any of criteria at 8 C.F.R. § 204.5(h)(3), of which an alien must meet at least three.

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, the petitioner failed to support his motion with any precedent decisions or other comparable evidence to establish that the decision was based on an incorrect application of law or USCIS policy. The motion to reconsider will be dismissed. Moreover, the petitioner failed to address all of the grounds for dismissal in the decision of the AAO, including the petitioner's failure to establish his intent to continue to work in the United States in his area of expertise and the noted discrepancies. Accordingly, we consider those issues to be deemed abandoned. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir.2005).

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 reconsider is dismissed, the decision of the AAO dated July 7, 2009, is affirmed, and the petition remains denied.