

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

[REDACTED]

B2

DATE: DEC 04 2012

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition on November 4, 2008. The Administrative Appeals Office (AAO) dismissed the appeal on September 21, 2009. The petitioner filed a motion to reconsider the AAO appellate dismissal, which the AAO dismissed on April 14, 2011, she then filed a motion to reopen and reconsider the previous motion, which the AAO dismissed on July 30, 2012. The matter is now before the AAO on a third motion, which is a motion to reconsider. The present motion to reconsider will be dismissed.

The petitioner has been notified within two AAO decisions that any motion must be: "Accompanied 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." 8 C.F.R. § 103.5(a)(1). Yet, even within this third motion, the petitioner failed to include such a statement. Therefore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed. As such, the motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4) without regard to the claims contained within the motion.

Notwithstanding the above, motions for the reconsidering 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, 108 (1988)). "There is a strong public interest in bringing litigation to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases." *INS v. Abudu*, 485 at 107. Based on its discretion, "[T]he [USCIS] has some latitude in deciding when to reopen a case. [USCIS] should have the right to be restrictive. Granting such motions too freely will permit endless delay of deportation by aliens creative and fertile enough to continuously produce new and material facts sufficient to establish a prima facie case." *Id.* at 108. The result also needlessly wastes the time and efforts of the triers of fact who must attend to the filing requests. *Id.* A party seeking to reopen a proceeding bears a "heavy burden." *Id.* at 110. With the current motion, the petitioner has not met that burden.

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). The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The very nature of a motion to reconsider is that the original decision was defective in some regard. See *Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991). A motion to reconsider is based on the existing record and petitioners may not introduce new facts or new evidence relative to their arguments.

Additionally, a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. See *Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). 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 could 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. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). 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. *Id.* at 60.

The present motion is limited to addressing the reasons that the AAO cited in its latest decision dated July 30, 2012. The AAO's findings within the July 30, 2012, decision related to the following issues:

1. The petitioner failed to submit any evidence with her motion filed on May 16, 2011 that would qualify as "new" under 8 C.F.R. § 103.5(a)(2) in that it was previously unavailable but related to achievements that predated the filing of the petition.
2. The petitioner also relied upon evidence that postdated the petition filing date. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).
3. The petitioner requested additional time to submit a brief to accompany her motion filed on May 16, 2011. Although the regulation at 8 C.F.R. § 103.5(a)(1)(iii) allows for the motion to be accompanied by a brief, the regulations do not allow additional time to submit a brief or additional evidence after the filing of a motion. *Compare* 8 C.F.R. § 103.3(a)(2)(vii), which allows the AAO to grant additional time to submit a brief after the filing of an appeal. Page 2 of the Form I-290B instructions clearly explains that "[a]ny additional evidence must be submitted with the motion" and there is no provision for an extension.

The petitioner's present motion to reconsider does not relate to any of the elements enumerated above from the AAO's July 30, 2012, decision. Instead, she elected to place focus back on the merits of her eligibility claims as discussed in the director's initial denial, the AAO's decision dismissing the appeal and the AAO's decision on the initial motion. As the petitioner has not alleged a legal error on the AAO's most recent decision, which concluded the filing did not qualify as a motion, she has not filed a proper motion to reconsider.

Additionally, the petitioner failed to support her motion with any pertinent precedent decisions to establish that the AAO's most recent decision was based on an incorrect application of law or USCIS policy in accordance with 8 C.F.R. § 103.5(a)(3). She therefore, failed to meet the regulatory requirements for filing a motion to reconsider.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (citing *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)). Here, the petitioner has not sustained that burden.

**ORDER:** The motion to reconsider is dismissed. The decision of the AAO dated July 30, 2012, is affirmed, and the petition remains denied.