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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

[Redacted]

B2

DATE: JUL 10 2012 OFFICE: TEXAS SERVICE CENTER [Redacted]

IN RE: [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:

[Redacted]

**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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 27, 2010. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on July 5, 2011. 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 the decision of the AAO dismissing the petitioner's original appeal, the AAO found that the petitioner failed to meet any of the criteria under the regulation at 8 C.F.R. § 204.5(h)(3), of which at least three are required. Specifically, the AAO distinctively and thoroughly discussed the petitioner's evidence and determined 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), membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the artistic display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Furthermore, the AAO determined that the petitioner did not meet the regulatory requirements for the submission of comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). Finally, pursuant to *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), the AAO conducted a final merits determination that considered all of the evidence and found that the petitioner did not demonstrate: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

On motion, the petitioner claims:

Per the denial, letters from [redacted] and the [redacted] are not sufficient to prove national or international acclaim. This is erroneous. The fame of these federations and the fact that the Presidents of this [sic] organizations are writing on behalf of this [petitioner] is enough to satisfy this requirement.

Documentation of the alien's memberships – we believe the decision that the [petitioner] did not prove the membership requirements to be flawed. "ITF" is the [redacted]. A simple search would show this organization is held to a high standard; thus its members are of the highest caliber in their field of taekwon-do.

Published materials – The denial wishes to belittle the [petitioner's] status in written articles claiming she was only listed as a name or in 2 sentences. This is erroneous. Any mention of the [petitioner] and her achievements are extraordinary – even if those accomplishments are with a team.

In order to properly file a motion, 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.

Notwithstanding the above, 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 Services (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 the case here, the motion to reconsider does not allege that the issues, as raised on appeal, involved the application of precedent to a novel situation, or that there is new precedent or a change in law that affects the AAO’s prior decision. Instead, the petitioner simply disagrees with certain findings within AAO’s decision regarding the awards criterion, the membership criterion, and the published material criterion. Moreover, the petitioner does not contest the findings of the AAO for the artistic display criterion, the leading or critical role criterion, the comparable evidence requirement, and the final merits determination. The AAO, therefore, considers these issues to be abandoned on motion. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

Regarding the issues raised by the petitioner on motion, the AAO thoroughly addressed and analyzed all of the petitioner’s documentary evidence, including the documentary evidence referred by the petitioner on motion, and determined that it did not meet the plain language of the regulation at 8 C.F.R. §§ 204.5(h)(3)(i)-(iii). The petitioner generally claims the decision was “erroneous” without demonstrating that the decision was based on an incorrect application of law or USCIS policy and was not supported by any pertinent precedent decisions. As noted above, a motion to reconsider must include specific allegations as to how the AAO erred as a matter of fact or law in its prior decision, and it must be supported by pertinent legal authority. Again, a motion to reconsider is not a process by which a party may seek reconsideration by generally alleging error in the prior decision without demonstrating that the decision was based on an incorrect application of law or

USCIS policy. 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 O-S-G-*, 24 I&N Dec. 56, 60 (BIA 2006). Simply disagreeing with a decision based on a matter of opinion, as opposed to an incorrect application of law, precedent decision, or USCIS policy, is insufficient to meet the requirements of a motion to reconsider pursuant to the regulation at 8 C.F.R. § 103.5(a)(3).

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 5, 2011, is affirmed, and the petition remains denied.