



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 21 2013** Office: TEXAS SERVICE CENTER R

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on June 12, 2012. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on November 3, 2012. The AAO also dismissed the petitioner's motion to reopen on May 7, 2013. The matter is again before the AAO on a motion to reopen. The motion to reopen will be dismissed. The previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner's brief accompanying the present motion reiterates previous claims regarding the petitioner's eligibility for the exclusive classification. The petitioner makes no attempt in his current motion to address the AAO's most recent decision, which concluded that the filing did not meet the regulatory requirements for a motion to reopen or a motion to reconsider.

As stated in the AAO's most recent decision, 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 again failed to submit a statement regarding if the validity of the decision of the AAO has been or is the 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).

Motion to Reopen

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

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, 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

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.)

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 reopen is a fundamentally different motion than a motion to reconsider. *Id.* at 402 (citing *Sanchez v. INS*, 707 F.2d 1523, 1529 (D.C.Cir.1983); *Chudshevid v. INS*, 641 F.2d 780, 783 (9th Cir.1981)). It does not contest the correctness of (or simply request a reevaluation of) the prior decision on the previous factual record. Rather, a motion to reopen proceedings seeks to reopen proceedings so that new evidence can be presented and so that a new decision can be entered, normally after a further evidentiary hearing. *Matter of Cerna*, 20 I&N Dec. at 403. “A motion to reopen must state the *new* facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.” (Emphasis added) 8 C.F.R. § 103.5(a)(2). The petitioner presents the same facts within this motion that he presented in a previous proceeding and the only new evidence submitted is a certified translation dated June 3, 2013 for an email that appears to have been sent on October 1, 2011, regarding the “International Science and Peace Week” conference, for which there is no supporting documentation or evidence that it was addressed to the petitioner, or that he even attended. The petitioner also submitted an email addressed to poposp21@yahoo.co.jp dated June 3, 2013 regarding “The Science of Placebo” conference, but that evidence cannot be considered here. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 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 USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. Furthermore, the present motion may only address the elements contained in the most recent AAO decision, finding that the petitioner’s December 3, 2012 filing did not meet the requirements of a motion. Therefore, the petitioner has failed to meet the regulatory requirements for filing a motion to reopen.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reopen is dismissed. The decision of the AAO dated May 7, 2013, is affirmed, and the petition remains denied.