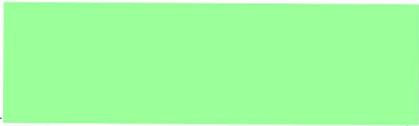




**U.S. Citizenship
and Immigration
Services**

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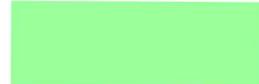


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Office: TEXAS SERVICE CENTER

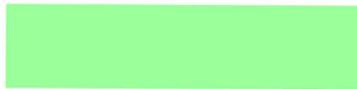
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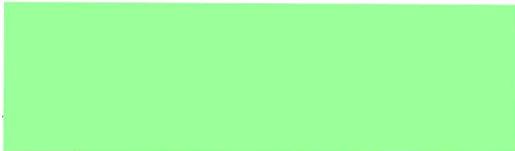
Petitioner:

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 (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 April 19, 2012 and dismissed the petitioner's motion to reopen and motion to reconsider on March 5, 2013. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on August 8, 2013. The matter is again before the AAO on a motion to reopen and a motion to reconsider. The motion to reopen will be dismissed. The motion to reconsider 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 specifically and thoroughly discussed the petitioner's evidence and 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). As stated in that decision, the petitioner only established his eligibility for the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). In addition, on appeal, the petitioner abandoned his claims regarding the criteria at 8 C.F.R. § 204.5(h)(3)(ii),(iii), (v), (viii), (ix) and (x). With regard to the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the petitioner abandoned all his honors except the

Furthermore, as stated in the AAO's decision, where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time in a subsequent filing before the AAO. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The petitioner's opportunity to submit the documents was in response to the director's request for evidence. *Id.* Furthermore, as stated in the AAO's decision, even if the 2010 award were found to be qualifying, and it is not, the plain language of the criterion requires more than one award or prize. Finally, the AAO found that the petitioner had not submitted qualifying evidence under the criterion at 8 C.F.R. § 204.5(h)(3)(vii), a criterion that counsel does not contest on motion.

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). 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 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 only new evidence specifically referenced by counsel on motion is a copy of a letter from the Embassy of Nepal regarding the [REDACTED]. Although the appeal did not contain a copy of the letter itself, counsel quoted the letter. Regardless, for the above reasons, a copy of the previously quoted letter does not satisfy the requirements of 8 C.F.R. § 103.5(a)(2) because it only addresses one award.

The remaining evidence consists mostly of evidence the petitioner submitted previously, which is not "new" evidence. The petitioner also submits a March 27, 2013 letter from [REDACTED] New York. While the letter refers generally to "numerous certificates for [the petitioner's] accomplishments," the petitioner abandoned his claim to have received any nationally or internationally recognized awards for excellence other than the [REDACTED]. Moreover, even if the petitioner were to satisfy the awards criterion, the petitioner would still not satisfy at least three of the regulatory criteria as required under 8 C.F.R. § 204.5(h)(3). Further, the petitioner submits published material on motion not previously a part of the record of proceedings, some of which is in a foreign language and does not include a translation as required under 8 C.F.R. §§ 103.2(b)(3), 204.5(h)(3). The petitioner also fails to submit evidence relating to the publications in which these articles appeared to establish that the publications constitute professional or major trade journals or other major media pursuant to 8 C.F.R. § 204.5(h)(3)(iii). The petitioner was on notice from the regulation and the director's denial that such evidence is required. In addition, the petitioner submits additional evidence of performances. USCIS has never contested that the petitioner performs and this evidence does not contribute new facts to the record. Another new piece of evidence supporting the motion is a 1990 Junior Diploma documenting the passage of an examination. The petitioner has not explained how this new document relates to his eligibility for the classification sought. Finally, the petitioner submits an unsigned May 5, 2012 letter purportedly from [REDACTED] that contains the same information as a signed letter in the record from Mr. [REDACTED] dated May 14, 2012. This unsigned letter has no probative value and adds no new facts to the record of proceeding.

As the petitioner has not submitted evidence of new facts to overcome the deficiencies in the appeal, the petitioner has not filed a proper motion to reopen.

In support of the motion to reopen, counsel raises new assertions. For example, counsel now asserts that the director erred in considering the publication date of the published material. A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. Furthermore, regarding the abandoned criteria, the filing of a motion does not present a new opportunity to assert the petitioner's eligibility, as though the prior finding of abandonment had

not occurred. The petitioner may not now raise these issues on appeal without first establishing that the AAO erred in its original decision. 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 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.

On motion, counsel cites *Muni v. INS*, 891 F.Supp. 440 (N.D. Ill. 1995) and *Matter of Price*, 20 I&N Dec. 953 (Assoc. Comm’r 1994) for the proposition that through the submission of expert opinion letters, “[t]he petitioner has established eligibility through comparable evidence.” In both cases, the petitioner had submitted evidence that satisfied at least three of the regulatory criteria. Specifically, in each case the petitioner had submitted evidence of awards, published material, and high salary or significantly high remuneration pursuant to 8 C.F.R. § 204.5(h)(3)(i), (iii) and (ix). 891 F.Supp. at 444-45; 20 I&N Dec. at 955. Thus, these cases do not suggest that it is an error of law or policy not to consider vague opinion letters as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten categories of evidence “do not readily apply to the beneficiary’s occupation.” Thus, it is the petitioner’s burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to his occupation and how the evidence submitted is comparable to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, the petitioner has, at some point in the proceedings, claimed to meet nine of the ten categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

The motion to reconsider does not apply a precedent or other legal authority to a novel situation, or assert that there is new precedent or a change in law that affects the AAO’s prior decision. 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. In addition, the motion must establish that the decision was incorrect based on the evidence at the time of the initial decision. 8 C.F.R. § 103.5(a)(4). The petitioner’s filing does not meet this requirement.

The motions will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 and the motion to reconsider are dismissed, the decision of the AAO dated August 8, 2013, is affirmed, and the petition remains denied.