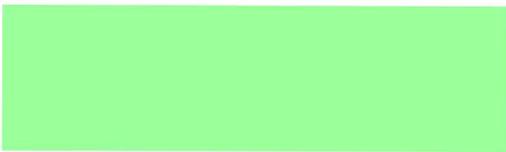




U.S. Citizenship  
and Immigration  
Services

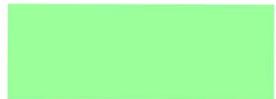
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DATE: DEC 16 2013

Office: NEBRASKA SERVICE CENTER

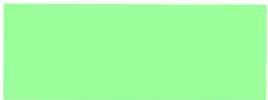
FILE:



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 (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, Nebraska Service Center, denied the employment-based immigrant visa petition on November 20, 2008. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal on the merits on October 19, 2009. The AAO dismissed a subsequent motion to reopen on May 21, 2010. The AAO rejected two additional filings the petitioner marked as appeals on December 13, 2011 and October 9, 2012. Both decisions noted that had the petitioner filed the submissions as motions, the AAO would have dismissed them. The AAO dismissed an additional motion to reopen on September 5, 2013. The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed. The AAO's September 5, 2013 decision will be affirmed, and the petition will remain denied.

As stated in the AAO's September 5, 2013 and October 9, 2012 decisions, 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 whether the validity of the decision of the AAO has been or is the subject of any judicial proceeding even though he was placed on notice of this requirement on two previous occasions. As such, the motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

Notwithstanding the above, as stated in the September 5, 2013, October 9, 2012, December 13, 2011 and May 21, 2010 decisions, 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). Furthermore, the new facts relating to a motion to reopen must address the AAO's most recent decision dismissing the petitioner's motion. 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 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. The AAO also advised the petitioner in the May 21, 2010 decision that any new evidence supporting a motion to reopen must still establish the beneficiary's eligibility as of the date of filing, in this case November 15, 2007.

The most recent decision is the dismissal of the petitioner's motion on September 5, 2013, and, thus, the petitioner must overcome the AAO's basis for dismissing that appeal before the AAO will address the merits of any previous filing. The petitioner's most recent filing was both untimely and did not meet the requirements of a motion because the petitioner did not support the motion with new evidence. In support of the current motion, the petitioner asserts that he has no evidence to support his claim that [REDACTED] mailed the petitioner's previous motion to the wrong address. The petitioner further asserts that he has no evidence of his "special talent in the past" and submits evidence relating to his achievements in 2013, well after the filing date in 2007.

With regard to the untimely filing of the most recent motion, which the petitioner filed four months after the AAO's rejection of the previous filing, the petitioner filed that motion as self-represented and provides no evidence to support his claim that another entity mailed the motion to the wrong address. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Thus, the petitioner has not submitted new evidence that overcomes the AAO's September 5, 2013 finding that the filing was untimely. Moreover, the petitioner does not assert or submit new evidence to demonstrate that the previous filing met the requirements of a motion through the filing of new evidence. Consequently, the present motion to reopen must be dismissed.

In the alternative, the petitioner's submission also fails to provide a proper basis for reevaluating the underlying petition on the merits. All of the evidence the petitioner submits in support of the current motion postdates by several years the filing date of the original petition, November 15, 2007. As stated in the AAO's May 21, 2010 decision, the petitioner must establish eligibility 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 U.S. Citizenship and Immigration Services (USCIS) cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

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 September 5, 2013 is affirmed, and the petition remains denied.