



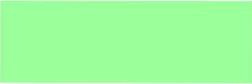
U.S. Citizenship  
and Immigration  
Services

(b)(6)

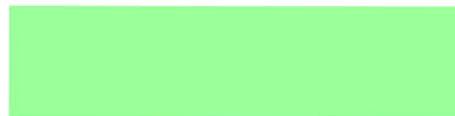


DATE: **FEB 13 2013**

Office: NEBRASKA SERVICE CENTER

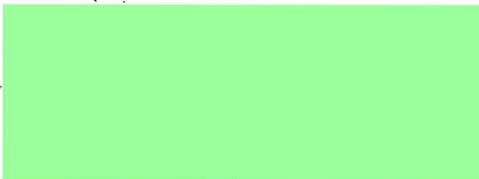
FILE: 

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:



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, Nebraska Service Center, denied the employment-based immigrant visa petition on May 11, 2012. The petitioner filed a motion to reopen the director's decision on June 6, 2012. The director dismissed the petitioner's motions on October 2, 2012. The matter is now before the AAO on appeal. The appeal will be dismissed.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that an appeal shall be summarily dismissed if the concerned party fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner's appeal relates to the director's latest decision, which was a motion to reopen and a motion to reconsider, dated October 2, 2012. The present appeal is limited to addressing the elements contained within the director's latest decision dated, October 2, 2012. The director's findings within the motion decision related to the following issues:

1. The evidence submitted with the motion did not meet the requirements of a motion to reopen as none of the evidence contained new facts that were previously unavailable. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. This is a primary requirement under 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.<sup>1</sup> New evidence is considered to be material to the present case and not previously submitted. This "new" evidence is expected to convey new value or new meaning to the case.
2. The director also noted that some of the evidence was dated after the petition's 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 beneficiary 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 director's decision on the motion also noted that the petitioner's motion did not meet the requirements of a motion to reconsider as it was not supported by any pertinent precedent decisions. This is a primary requirement under 8 C.F.R. § 103.5(a)(3), which requires the filing party to establish that the decision was based on an incorrect application of law or USCIS policy and that the director's decision was incorrect based on the evidence on record at the time of the initial decision.

The petitioner's present appeal does not relate to any of the elements enumerated above from the director's October 2, 2012, decision. Instead, he asserts that the director did not correctly interpret the evidence in either decision. The petitioner fails, however, to explain how the evidence submitted on motion was "new" in that it was not previously available but also related to the petitioner's

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<sup>1</sup> 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.)

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eligibility as of the date of filing. As such, the petitioner has not demonstrated a proper basis for the present appeal.

As stated in the regulation at 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the concerned party fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. *Cf. Idy v. Holder*, 674 F.3d 111, 116 (1st Cir. 2012) (where an alien fails to raise any legal issue regarding the Board of Immigration Appeals denial of an inadmissibility waiver, the Court of Appeals is deprived of jurisdiction). *See also Desravines v. U.S. Atty. Gen.*, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal are deemed abandoned); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief). In this instance, the petitioner has not sufficiently identified a basis for the appeal. The petitioner does not contest the director's specific findings contained within the decision on the petitioner's motions, and offers no substantive basis for the filing of the appeal. As such, the appeal must be summarily dismissed.

**ORDER:** The appeal is dismissed.