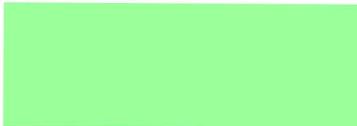
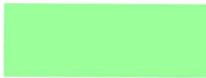


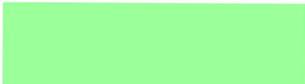
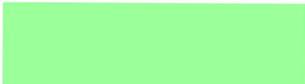


U.S. Citizenship
and Immigration
Services

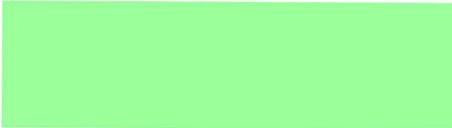
(b)(6)



DATE: **FEB 20 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)

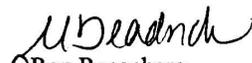
ON BEHALF OF PETITIONER:


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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a film director and writer. Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

In the August 15, 2012 decision of the AAO dismissing the petitioner's appeal, the AAO found that the petitioner had failed to establish that he meets at least three of the regulatory categories of evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). The AAO specifically discussed the petitioner's claimed eligibility for the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the original contributions of major significance criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii) and determined that he failed to establish his eligibility. The AAO therefore concluded that the petitioner had failed to satisfy the antecedent regulatory requirement of three categories of evidence.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 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.

On motion, the petitioner submits a letter from counsel and additional evidence. Counsel states: "[The petitioner] was devastated when he heard of the dismissal of his appeal and requested we file the instant motion to reopen. He has provided us with additional evidence he wishes to submit as further evidence of his eligibility for the classification requested." Counsel does not

explain how the specific documentary evidence that the petitioner submits on motion supports a finding of eligibility.

The petitioner submits the following documentation:

1. An undated photograph of [REDACTED]
2. An undated photograph of the petitioner posing with [REDACTED]
3. A copy of the petitioner's book [REDACTED] dated June 26, 2012;
4. A copy of the synopsis of the script-novel [REDACTED]
5. An August 23, 2012 article in [REDACTED] entitled [REDACTED]
6. Information indicating that [REDACTED] is a Korean language newspaper published in eight metropolitan areas in the United States (including Los Angeles);
7. Internet screenshot showing that [REDACTED] is available for purchase on Amazon.com (the accompanying "Book Description" lists a "Publication Date" of [REDACTED]); and
8. Recent "Google Search" results for the petitioner's name.

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

With regard to items 1 and 2 above, the petitioner's motion does not indicate the specific category of evidence at 8 C.F.R. § 204.5(h)(3) to which the photographs apply. Moreover, a review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). In addition, the petitioner has failed to explain why the evidence was previously unavailable and could not have been submitted earlier. The petitioner has been afforded three different opportunities to submit evidence demonstrating his eligibility: at the time of the original filing of the petition on August 31, 2010, in response to the director's December 22, 2010 request for additional evidence, and at the time of the filing of the

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).

appeal on July 15, 2011. A review of the evidence that the petitioner submits on motion reveals no fact that could be considered “new” under 8 C.F.R. § 103.5(a)(2) and, therefore, cannot be considered a proper basis for a motion to reopen.

Moreover, regarding items 3 – 8 above, this documentary evidence post-dates the petition’s August 31, 2010 filing date. Counsel states:

[The petitioner] requested that we make clear that . . . he is on the verge of realizing full length motion picture projects – written and developed by [the petitioner] – which are to be directed and produced by him in association with well-known companies and individuals in the Hollywood motion picture industry.

There is no evidence showing that full-length motion picture films written and developed by the petitioner had been released at the time of filing. While a motion to reopen must be supported by affidavits or other documentary evidence, the documentation must be about events occurring before or at the time of the filing of the petition. As previously discussed in the AAO’s appellate decision, 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.

The petitioner’s motion fails to identify any new facts and is unsupported by documentary evidence to overcome the grounds underlying the AAO’s August 15, 2012 decision. Once again, counsel fails to specify the categories of evidence at 8 C.F.R. § 204.5(h)(3) that the petitioner purportedly meets and how the submitted evidence pertains to those specific criteria. Moreover, the instant motion does not contain the statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). Accordingly, for the aforementioned reasons, the motion is dismissed.

ORDER: The motion to reopen is dismissed, the AAO’s August 15, 2012 decision is affirmed, and the petition remains denied.