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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: JAN 23 2013

OFFICE: TEXAS SERVICE CENTER

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:

[Redacted]

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, Texas Service Center, denied the employment-based immigrant visa petition on April 12, 2011. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal on July 26, 2012. The matter is now before the AAO on a motion to reconsider, filed on August 22, 2012. The motion will be dismissed. The AAO's previous decision will be affirmed, and the petition will remain denied.

I. Requirements of a Motion

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) informs the public of the filing requirements for a motion and provides in pertinent part:

A motion shall be submitted on Form I-290B and may be accompanied by a brief. It must be:

- (A) In writing and signed by the affected party or the attorney or representative of record, if any;
- (B) Accompanied by a nonrefundable fee as set forth in § 103.7;
- (C) Accompanied 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;
- (D) Addressed to the official having jurisdiction; and
- (E) Submitted to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction.

On motion, counsel states, "the validity of the [AAO] decision in this case has not been the subject to any judicial proceeding."

II. Motion to Reconsider

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the original decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

In addition, a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceeding. *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 the original decision that could not have been addressed by the party. Furthermore, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the original 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 original decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

A. Eligibility for the Classification Sought

The petitioner seeks classification as an “alien of extraordinary ability” in the field of advance computation in biological engineering, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The AAO affirmed and dismissed the petitioner’s appeal.

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). 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 its July 26, 2012 decision, the AAO dismissed the petitioner’s appeal, concluding that he failed to meet at least three of the ten regulatory criteria under the regulation at 8 C.F.R. § 204.5(h)(3), and thus failed to demonstrate that he has sustained national or international acclaim or that he is within a small percentage at the very top in the field of endeavor. See 8 C.F.R. § 204.5(h)(3). The AAO specifically and thoroughly discussed the criteria implicated by the evidence in the record, including the prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i); the membership in associations criterion under 8 C.F.R. § 204.5(h)(3)(ii); the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv); the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v); the authorship of scholarly article criterion under 8 C.F.R. § 204.5(h)(3)(vi); the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii); and the high salary or other significantly high remuneration criterion under 8 C.F.R. § 204.5(h)(3)(ix).

On motion, counsel contests the AAO’s findings relating to three criteria: the prizes or awards criterion at 8 C.F.R. § 204.5(h)(3)(i); the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v) and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). In support of the motion to reconsider, counsel files a three-page brief, dated August 17, 2012, accompanied by

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no additional supporting documents. Counsel has failed to show that a motion to reconsider is warranted in this case.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

On motion, counsel asserts that “the AAO may not have given proper consideration to [the petitioner’s] numerous awards and research grants, including the [redacted]

[redacted] as well [as] numerous research grants from the [redacted] and [redacted] [sic] as further evidence of [the petitioner’s] extraordinary ability and sustained academic excellence.” Counsel requests “the AAO to re-examine” the evidence in the record as relating to this criterion.

Counsel has not stated the reasons for reconsideration nor has counsel provided any support, including pertinent precedent decisions, showing that the AAO’s July 26, 2012 decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). Indeed, the AAO discussed this criterion – making specific references to the petitioner’s abovementioned accomplishments – and its many reasons for concluding that the petitioner failed to meet this criterion in its prior decision. Counsel’s request that “the AAO [] re-examine” the evidence and his mere statement that the petitioner meets this criterion, without specifically addressing any of the AAO’s reasoning or providing any legal or factual basis to challenge the AAO’s adverse decision, does not trigger the AAO to again conduct a full analysis of the criterion.

It is well established that a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the original decision. *Matter of O-S-G-*, 24 I&N Dec. at 58. Instead, the petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the July 26, 2012 decision or must show how a change in law materially affects the prior decision. *Id.* at 60. The record does not support counsel’s speculation that the AAO failed to properly consider relevant evidence in its prior decision. In addition, counsel has failed to demonstrate any error in the AAO’s prior decision.

Accordingly, the AAO dismisses the petitioner’s motion to reconsider as relating to this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

On motion, counsel asserts that the AAO “may have overlooked a significant amount of weighty evidence that [the petitioner] is widely recognized as an extraordinary scientist who has made

original scientific contributions of major significance in his field.” Counsel then points to the following evidence to support his assertion that the petitioner meets this criterion: (1) a reference letter from [REDACTED]; (2) a reference letter from [REDACTED]; (3) a reference letter from [REDACTED]; (4) a reference letter from [REDACTED]; (5) the petitioner’s development of the [REDACTED]; (6) the petitioner’s published work and frequency of its citations; and (7) the petitioner’s awards and grants. Counsel requests that “the AAO reconsider its determination” as relating to this criterion.

Other than speculating that the AAO “may have overlooked” evidence in the record, counsel has not stated the reasons for reconsideration nor has counsel provided any support, including pertinent precedent decisions, showing that the AAO’s July 26, 2012 decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). Indeed, the AAO discussed this criterion – making specific references to the abovementioned reference letters and the petitioner’s achievements – and its many reasons for concluding that the petitioner failed to meet this criterion in its prior decision. Counsel’s request that “the AAO reconsider its determination” and his mere statement that the petitioner meets this criterion, without specifically addressing any of the AAO’s reasoning or providing any legal or factual basis to challenge the AAO’s adverse decision, does not trigger the AAO to again conduct a full analysis of the criterion.

Moreover, it is well established that a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the original decision. *Matter of O-S-G-*, 24 I&N Dec. at 58. Instead, the petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the July 26, 2012 decision or must show how a change in law materially affects the prior decision. *Id.* at 60. The record does not support counsel’s speculation that the AAO overlooked relevant evidence in its prior decision. In addition, counsel has failed to show any error in the AAO’s prior decision.

Accordingly, the AAO dismisses the petitioner’s motion to reconsider as relating to this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On motion, counsel asserts that “[t]he AAO and USCIS have overlooked [the petitioner]’s critical and essential role that he has played at the [REDACTED]. Specifically, counsel asserts that the petitioner “has served in a leading and critical capacity at the [REDACTED] leading the University’s research efforts in the field of advanced computation and bioengineering from 1998 and to the present, most recently in the position of [a] tenured Associate Professor.” Pointing to the petitioner’s development of the [REDACTED] and a reference letter from [REDACTED] counsel contends that the petitioner meets this

criterion and requests “the AAO to re-examine the previously provided evidence” as relating to the criterion.

Other than the unsubstantiated assertion that the AAO and USCIS “have overlooked” evidence in the record, counsel has not stated the reasons for reconsideration nor has counsel provided any support showing that the AAO’s July 26, 2012 decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). Indeed, as with the two previously discussed criteria, the AAO discussed the leading or critical role criterion – making specific references to the petitioner’s development of the [redacted] reference letter and the petitioner’s teaching position at the [redacted] – and its reasons for concluding that the petitioner failed to meet this criterion in its prior decision. Counsel’s request that “the AAO [] re-examine” the evidence and his mere statement that the petitioner meets this criterion, without specifically addressing any of the AAO’s reasoning or providing any legal or factual basis to challenge the AAO’s adverse decision, does not trigger the AAO to again conduct a full analysis of the criterion.

It is well established that a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the original decision. *Matter of O-S-G-*, 24 I&N Dec. at 58. Instead, the petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the July 26, 2012 decision or must show how a change in law materially affects the prior decision. *Id.* at 60. The record does not support counsel’s assertion that the AAO and USCIS overlooked relevant evidence in its prior decision. In addition, counsel has failed to specify any error in the AAO’s prior decision.

Accordingly, the AAO dismisses the petitioner’s motion to reconsider as relating to this criterion.

III. Conclusion

The petitioner has not shown that the motion to reconsider should be granted, because he has not stated any valid reason for reconsideration, nor has he sufficiently supported any valid reason for reconsideration with pertinent legal precedent establishing that the AAO’s July 26, 2012 decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, the instant motion to reconsider will be dismissed.

The burden of proof in visa petition proceeding remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motion to reconsider is dismissed. The AAO’s July 26, 2012 decision is affirmed, and the petition remains denied.