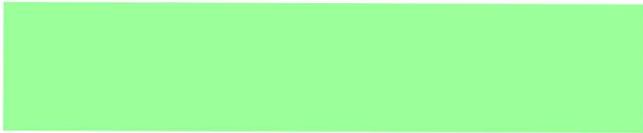




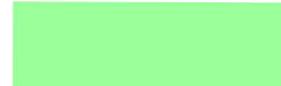
U.S. Citizenship
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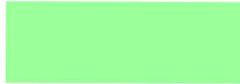


DATE JUN 04 2013 OFFICE: TEXAS SERVICE CENTER

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 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 June 23, 2011. Subsequently, the Administrative Appeals Office (AAO) dismissed the petitioner's appeal on August 9, 2012. The matter is now before the AAO on a motion to reopen, filed on September 7, 2012. The petitioner's motion will be dismissed. The AAO, however, will reopen the proceeding for the limited purpose of considering two notarized letters relating to the petitioner's intent to continue working in her field in the United States. Notwithstanding the reopening, 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 subsection (C) that a motion shall be submitted on Form I-290B, Notice of Appeal or Motion, and it 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."

On motion, the petitioner has failed to submit a statement indicating if the validity of the AAO's August 9, 2012 unfavorable decision has been or is the subject of any judicial proceeding pursuant to the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the petitioner's motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4) without regard to the claims contained within the motion.

II. Motion to Reopen

The petitioner's motion must also be dismissed because it does not meet the requirements for a motion to reopen. A party seeking to reopen a proceeding bears a heavy burden and "must state the new facts to be provided in the reopened proceeding 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 evidence that was not available and could not have been discovered or presented in the previous proceeding. *See Matter of Singh*, 24 I&N Dec. 331, 334 (BIA 2007). In short, a motion to reopen seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991). Based on its discretion, "the INS [now the U.S. Citizenship and Immigration Services (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." *INS v. Abudu*, 485 U.S. 94, 108 (1988). The result also needlessly wastes the time and efforts of the triers of fact who must attend to the filing requests. *Id.*

On motion, the petitioner claims that she has provided evidence of a one-time achievement, that is, a major, internationally recognized award, under 8 C.F.R. § 204.5(h)(3). She further claims that she meets the membership in associations criterion under 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), the

display at artistic exhibitions or showcases criterion under 8 C.F.R. § 204.5(h)(3)(vii), and the high salary or other significantly high remuneration criterion under 8 C.F.R. § 204.5(h)(3)(ix).

On motion, the petitioner has provided the following evidence: (1) an August 23, 2012 letter from [REDACTED], Chairman of the [REDACTED] (2) an August 18, 2012 letter from [REDACTED], Vice Chairman of the [REDACTED]; (3) an August 20, 2012 letter from [REDACTED] Vice Chairman of the [REDACTED] (4) a March 8, 2003 certificate of membership issued by the [REDACTED] (5) an August 21, 2012 letter from [REDACTED] Vice President of the [REDACTED] (6) a July 8, 2010 letter from [REDACTED] President of the [REDACTED] (7) a June 30, 2011 letter from [REDACTED] of [REDACTED]; (8) an August 20, 2012 online printout entitled “China Average Salaries and Expenditures”; (8) a July 5, 2011 letter from [REDACTED], a business owner in Houston, Texas; (9) a July 8, 2011 letter from [REDACTED], a resident in Sugarland, Texas; and (10) Chinese and Japanese documents that have not been properly translated into English.

The petitioner’s motion to reopen is dismissed for the following reasons. First, the foreign language documents the petitioner submitted on motion have no evidentiary value and will not be considered, because they have not been properly translated pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Specifically, on motion, the petitioner has submitted foreign language documents purported to be publications relating to Chinese martial arts, the [REDACTED], the [REDACTED] and [REDACTED], China. None of these foreign language documents are accompanied by a complete English translation or a certification of translation. The petitioner has provided no evidence showing that a translator who is competent to translate from the foreign language into English completely and accurately translated the foreign language documents into English. *See* 8 C.F.R. § 103.2(b)(3). Although these documents contain some English translation, the petitioner has not provided any information relating to the identity or the competency of the translator, or the completeness or accuracy of the translation. As such, the foreign language documents submitted on motion have no evidentiary value, and the AAO will not consider them.

Second, the English documents submitted on motion do not constitute “new” facts or evidence, such that they were not available and could not have been discovered or presented in the previous proceeding. *See Matter of Singh*, 24 I&N Dec. at 334; *see also Matter of Cerna*, 20 I&N Dec. at 403. Specifically, on motion, the petitioner has provided a July 2010 letter from [REDACTED] and a June 2011 letter from [REDACTED]. These documents predate the petitioner’s appeal filed on July 19, 2011 and were already part of the record of proceeding when the AAO dismissed the appeal. Specifically, the petitioner had previously submitted these documents in support of her petition, in response to the director’s request for evidence (RFE) or in support of her appeal. The AAO, in its August 9, 2012 decision, considered these documents, and concluded that they do not establish the petitioner’s visa eligibility. As the petitioner has not challenged the AAO’s findings in a motion to reconsider, the AAO will not again consider these documents in the present motion to reopen.

In addition, on motion, the petitioner has submitted: (1) a March 2003 certificate of membership, (2) an August 2012 letter from [REDACTED], (3) an August 2012 letter from [REDACTED] (4) an August 2012 letter from [REDACTED], (5) an August 2012 letter from [REDACTED] and (6) an August 2012 online printout. The petitioner has failed to establish that these documents were not available and could not have been discovered or presented in the previous proceeding. *See Matter of Singh*, 24 I&N Dec. at 334; *see also Matter of Cerna*, 20 I&N Dec. at 403. Specifically, as the certificate of membership was issued in 2003, the petitioner could have submitted it previously.

More specifically, although the four letters are dated August 2012, after the AAO issued its adverse decision, the petitioner has not shown that she could not have obtained these letters earlier. These letters discuss the petitioner's past accomplishments, including her participation in the [REDACTED], her participation as a judge, and her membership in the [REDACTED]. The petitioner has provided no evidence showing that she could not have asked these individuals to author the letters when she filed her petition in August 2010, her response to the director's RFE in April 2011 or her appeal in July 2011. Indeed, the petitioner had previously submitted documents from the [REDACTED], the [REDACTED], and the [REDACTED]. This shows that the petitioner could have obtained and presented the letters in the previous proceeding.

Regardless, the letters are not consistent with the record. Specifically, while the letters claim that, like the Olympics, countries send their best athletes to the [REDACTED], the record contains a list of participating teams, including the [REDACTED] and the [REDACTED], and two teams each from Singapore and Thailand, suggesting that the participating teams are clubs rather than national teams. As the petitioner did not provide a translation of the complete list of teams, the petitioner has not established that China sent only a single team of its best athletes as claimed.

Furthermore, although the online printout "China Average Salaries and Expenditures" is dated August 2012, the petitioner had submitted the same document, dated July 12, 2011, on appeal. The AAO, in its August 9, 2012 decision, concluded that the petitioner may not raise the high salary or other significantly high remuneration criterion, a previously unclaimed eligibility criterion on appeal. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). In short, none of the English documents submitted on motion constitute new facts or evidence, such that a motion to reopen is warranted. Regardless, the petitioner has provided evidence of average salaries for unrelated occupations. At issue under 8 C.F.R. § 204.5(h)(3)(ix) is whether the petitioner's salary or other remuneration was high "in relation to others in the field."

Third, notwithstanding the petitioner's evidentiary deficiencies discussed above, the petitioner has not challenged or overcome the AAO's August 9, 2012 finding that she may not raise a previously unclaimed eligibility criterion on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766. Specifically, as the petitioner may not claim on appeal for the first time she has provided evidence of a one-time achievement, that is, a major, internationally recognized award, she may not now on motion advance the same claim. *See* 8 C.F.R. § 204.5(h)(3). Similarly, as the petitioner may not claim on appeal for the first time that she meets the high salary or other significantly high remuneration

critterion, she may not now on motion advance the same claim. See 8 C.F.R. § 204.5(h)(3)(ix). Moreover, the AAO's August 9, 2012 decision found that the petitioner had abandoned the membership in associations criterion and the original contributions criterion. The petitioner does not contest that legal finding on motion. 8 C.F.R. § 204.5(h)(3)(ii), (v); see also *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Finally, on motion, the petitioner has failed to challenge the AAO's findings in the final merits determination or presented new facts or evidence showing (1) a "level of expertise indicating that the [petitioner] is one of that small percentage who have risen to the very top of the field of endeavor"; or (2) "that the [petitioner] has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010).

In light of the above, the petitioner has not filed a proper motion to reopen or reconsider the AAO's findings regarding her eligibility as an alien of extraordinary ability. The AAO, however, will reopen the proceeding for the limited purpose of considering two notarized letters relating to the petitioner's intent to continue working in her field in the United States. In its August 9, 2012 decision, the AAO concluded that the petitioner had not provided "two forms of evidence in the form of notarized letters," showing her intent to continue work in her field. In fact, on appeal, the petitioner did provide these two notarized letters – a July 2011 letter from [REDACTED] and a July 2011 letter from [REDACTED]. She has again provided these two letters on motion. Accordingly, the AAO reopens the proceeding to consider these letters. Having now considered the two letters, the AAO concludes that the petitioner has established her intent to continue working in her field in the United States.

In conclusion, the petitioner's motion to reopen is dismissed because the petitioner has failed to submit a statement regarding any judicial proceeding relating to the validity of the AAO's August 9, 2012 unfavorable decision and because the petitioner's filing does not meet the requirements of a motion to reopen. The AAO reopens the proceeding for the limited purpose of considering two notarized letters, and concludes that the petitioner has demonstrated her intent to continue working in her field.

ORDER: The petitioner's motion to reopen is dismissed; and the petition remains denied.