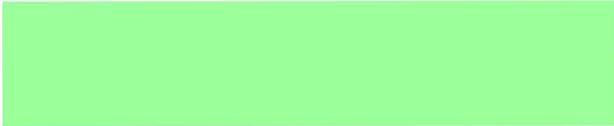


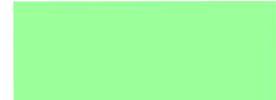


U.S. Citizenship
and Immigration
Services

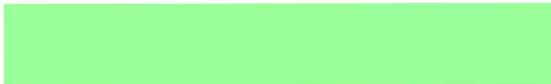
(b)(6)



DATE: **JUN 20 2013** Office: TEXAS SERVICE CENTER



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and reaffirmed that decision on motion. The petitioner filed a second motion, which the AAO dismissed. The matter is now before the AAO on a third motion to reopen. The motion will be dismissed, the previous decisions of the AAO will be affirmed, and the petition will remain denied.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding 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.

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 in the arts.¹ 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 May 24, 2011 decision of the AAO dismissing the petitioner's appeal, the AAO found that the petitioner had failed to establish that she 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 determined that the petitioner's evidence had met the category of evidence at 8 C.F.R. § 204.5(h)(3)(vii). The AAO specifically and thoroughly discussed the petitioner's remaining evidence and determined that she failed to establish eligibility for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), 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), the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), and the commercial successes in the performing arts criterion

¹ According to Form I-94, Arrival-Departure Record, the petitioner was last admitted to the United States on March 3, 2007 as an F-1 nonimmigrant student.

pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x). Thus, the AAO concluded that the petitioner had failed to satisfy the antecedent regulatory requirement of three categories of evidence.

The petitioner filed her first motion to reopen on July 6, 2011. On June 29, 2012, the AAO dismissed the motion as untimely and for not meeting the requirements of a motion to reopen.

The petitioner filed her second motion to reopen on July 31, 2012. The petitioner's second motion failed to offer arguments and evidence relating to the grounds underlying the AAO's June 29, 2012 decision. Specifically, the petitioner failed to submit evidence demonstrating that her motion filed on July 6, 2011 was timely and that it met the requirements of a motion to reopen. As such, the petitioner failed to meet the burden of establishing that the AAO's June 29, 2012 dismissal of her first motion was in error. As the petitioner's second motion failed to demonstrate that the AAO erred by dismissing her first motion, the AAO dismissed her second motion on December 21, 2012. In addition, the AAO explained why the evidence submitted in support of her second motion failed to satisfy the antecedent regulatory requirement of three categories of evidence.

The petitioner filed the instant (third) motion to reopen on January 22, 2013. In the instant motion to reopen, the petitioner asserts that she meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii) and (v) and she submits further evidence pertaining to those categories.

With regard to the instant motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO's most recent decision. The petitioner bears the burden of establishing that the AAO's December 21, 2012 dismissal of her second motion to reopen was itself in error. If the petitioner can demonstrate that the AAO erred by dismissing her second motion, then there would be grounds to reopen the proceeding. The petitioner has not done so in this proceeding. The submitted arguments and evidence do not point to specific errors in the AAO's most recent decision dated December 21, 2012. Accordingly, the motion is dismissed.

Furthermore, 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.²

On motion, the petitioner submits the following documentation:

1. Information about [redacted] magazine from the website of the [redacted];
2. Exhibition announcement for the petitioner's graphic works and paintings at the New York Public Library;
3. Information about the Japanese newspapers [redacted];

² 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).

4. A 2012 “Web Ranking” of “Newspapers in Belarus” printed from <http://www.4imn.com> and a “List of newspapers in Belarus” printed from *Wikipedia*;
5. Information printed from [REDACTED] stating that [REDACTED] is an “art magazine from Belarus”; and
6. An article purportedly published by [REDACTED] that mentions the petitioner, but its date and author are not identified.

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. Prior to filing her three motions, the petitioner had been afforded multiple different opportunities to submit evidence demonstrating her eligibility: at the time of the original filing of the petition, in response to the director’s notice of intent to deny, and at the time of the filing of the appeal. 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. Accordingly, for this additional reason, the motion is dismissed.

ORDER: The motion to reopen is dismissed, the AAO’s December 21, 2012 decision is affirmed, and the petition remains denied.