

(b)(6)

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: **MAY 07 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:

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 Director, Texas Service Center, denied the employment-based immigrant visa petition on June 12, 2012. Subsequently, the Administrative Appeals Office (AAO) dismissed the petitioner's appeal on November 3, 2012. The matter is now before the AAO on a motion to reopen, filed on December 3, 2012. The motion will be dismissed. AAO's previous decision will be affirmed, and the petition will remain denied.

I. GENERAL 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 November 3, 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 he has provided evidence showing that he meets the nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material relating to his work criterion under 8 C.F.R. § 204.5(h)(3)(iii), 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) photographs and documents relating to his receipt of the [REDACTED]; (2) documents relating to the [REDACTED]; (3) documents relating to his receipt of the [REDACTED]

[REDACTED] (4) a June 28, 2011 letter from [REDACTED], Ph.D., L.Ac., Professor of Family and Community Medicine at the [REDACTED]; (5) copies of published material and a wikipedia.com article entitled [REDACTED]; (6) online printouts relating to acupuncturists' salary; (7) the petitioner's 2010, 2009 and 2003 tax returns; (8) an online printout on historical currency exchange rates between the U.S. dollar and the Japanese Yen; (9) documents relating to the petitioner's [REDACTED] application; and (10) the petitioner's undated statement. The petitioner had previously submitted most of these documents in support of his petition, in response to the director's request for evidence (RFE) or in support of his appeal.

The petitioner's motion to reopen is dismissed for the following reasons. First, on motion, the petitioner has submitted online foreign language printouts relating to the [REDACTED] and acupuncturists' salary that were translated using an online translation service, Google Translate. These foreign language documents 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). 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). As such, these foreign language documents submitted on motion have no evidentiary value and the AAO will not consider them.

Second, the remaining 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, most of the documents submitted predate the director's June 12, 2012 denial of the petitioner's petition and/or the AAO's November 3, 2012 dismissal of the petitioner's appeal. Indeed, the petitioner had previously submitted most of these documents. The AAO, in its November 3, 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 legal 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 a number of online printouts that postdate the AAO's November 3, 2012 decision. 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, the petitioner has failed to show that he could not have printed and submitted the same online documents before the director's June 12, 2012 decision or the petitioner's July 10, 2012 appeal. In short, the petitioner has failed to show that any of the documents submitted on motion constitute new facts or evidence, such that a motion to reopen is warranted.

Notwithstanding the petitioner's evidentiary deficiencies discussed above, on motion, the petitioner has not overcome the AAO's November 3, 2012 finding that he has not submitted qualifying

evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. *See* 8 C.F.R. § 204.5(h)(3)(i)-(x).

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).

In its November 3, 2012 decision, the AAO concluded that the record “lacks evidence of the criteria for the [redacted] and the expertise of the judges such that the petitioner has established that [the award] is an award for excellence in medicine, rather than recognition of a commitment to freedom and peace through medicine.” On motion, the petitioner resubmits a December 14, 2010 document entitled “Reason for Presenting Award,” indicating that the petitioner was given the award because he is “highly regarded to contribute to human happiness and world peace with saving a lot of people with physical or mental problem in or outside Japan, based on the unique theory and longtime clinical experience.” The petitioner also resubmits an English translation entitled “History of Organization,” indicating that the purpose of the 2004 award “is to support the recipient in his or her professional activities and encourage them [sic] to continue to inform the world of their [sic] respective cultural profession.” Neither of these two previously submitted documents establishes, or even mentions, that excellence in medicine was a consideration for granting the petitioner the 2004 award.

Moreover, the “Recipient Decision Process” section of the English translation entitled “History of the Organization” provides, “Professional Recommendation from Third Party → [redacted]” Neither this document nor any other document submitted on motion establishes the identity or the expertise of the “Board of Judges.” In short, on motion, the petitioner has failed to overcome the AAO’s adverse finding regarding the 2004 award.

Furthermore, on motion, the petitioner has failed to overcome the AAO’s finding that the 2010 [redacted] has no “recognition beyond the presenting organization.” Specifically, on motion, the petitioner submits documents from the [redacted]’s website and individuals associated with the [redacted] to show the recognition of his 2010 certificate. Such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff’d*, 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media). The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the 2010 conference or certificate recipient(s) in nationally circulated publications.

In addition, the petitioner points to Professor [redacted]’s June 28, 2011 letter, previously submitted to support his petition, to show that he meets this criterion. Professor [redacted]’s letter, however, makes no mention of either the petitioner’s 2004 award or his 2010 certificate, or establishes that either award constitutes a nationally or internationally recognized prize or award for excellence in the field of endeavor.

Accordingly, the AAO dismisses the petitioner's motion to reopen as relating to this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

In its November 3, 2012 decision, the AAO concluded that the petitioner had abandoned this criterion on appeal because he did not "contest the director's [adverse] findings for this criterion or offer additional arguments" establishing that he met this criterion. On motion, the petitioner asserts that he meets this criterion without specifically challenging the AAO's finding that he had abandoned this criterion on appeal. As the petitioner has not specifically challenged the AAO's finding or provided any legal or factual support showing that the AAO erred, the AAO's finding on appeal – that the petitioner had abandoned this criterion – remains valid and will not be reconsidered. *See 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).

Moreover, the petitioner has failed to show through the documents submitted on motion that the articles, many of them accompanied by incomplete English translations, were published in professional or major trade publications or other major media. On motion, the petitioner has submitted one document relating to one publication, entitled "[REDACTED]" from wikipedia.com. As there are no assurances about the reliability of the content from this open, user-edited Internet site, the AAO will not assign any evidentiary weight to information from wikipedia.com.¹ *See Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008).

Finally, the articles in the [REDACTED] are about not "about" the petitioner; rather they are about [REDACTED] incurable hiccups. While the articles mention that the petitioner flew out to see him after seeing his condition on television, they do provide the final outcome or otherwise suggest that the petitioner successfully treated his condition.

¹ Online content from Wikipedia is subject to the following general disclaimer entitled "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY":

Wikipedia is an online open-content collaborative encyclopedia; that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information.

. . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 23, 2013, a copy of which is incorporated into the record of proceeding.

Accordingly, the AAO dismisses the petitioner's motion to reopen as relating to this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

In his June 12, 2012 decision, the director concluded that the petitioner had not met this criterion because he had not submitted any evidence in support of this criterion. On appeal, the petitioner did not challenge the director's finding or present any argument establishing that he met this criterion. As such, the petitioner had abandoned this criterion on appeal, and may not now raise it on motion. See *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Moreover, the petitioner has failed to show through the documents submitted on motion that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The only evidence he has submitted relating to others' salary and remuneration is online foreign language printouts that have not been properly translated pursuant to the regulation at 8 C.F.R. 103.2(b)(3). As discussed, these foreign language documents have no evidentiary value and they fail to show that the petitioner meets this criterion.

Accordingly, the AAO dismisses the petitioner's motion to reopen as relating to this criterion.

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 November 3, 2012 unfavorable decision and because the petitioner's filing does not meet the requirements of a motion to reopen.

ORDER: The motion to reopen is dismissed; the AAO's November 3, 2012 decision is affirmed; and the petition remains denied.