



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 03 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:

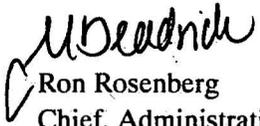
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and reaffirmed that decision on motion. The petitioner then filed a second motion, which the AAO dismissed. Subsequently, the petitioner filed a third motion, which the AAO again dismissed. The matter is now before the AAO on a fourth motion to reopen. The motion will be dismissed, the previous decision 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 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. The director found that the petitioner had failed to satisfy the antecedent regulatory requirement of three categories of evidence.

In the May 24, 2011 decision dismissing the petitioner's appeal, the AAO upheld the director's determination 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 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 that motion as untimely and for not meeting all of the requirements of a motion.

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

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.

decision. Specifically, the petitioner failed to demonstrate that her motion filed on July 6, 2011 was timely and that it met the requirements of a motion to reopen. As the petitioner failed to show that the AAO erred in its dismissal of her first motion, the AAO concluded that there were no grounds to reopen the proceeding and dismissed the second motion on December 21, 2012. In addition, the AAO explained why the evidence submitted in support of the second motion failed to satisfy the antecedent regulatory requirement of three categories of evidence.

The petitioner filed her third motion to reopen on January 22, 2013. The petitioner asserted that she met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii) and (v) and she submitted further evidence pertaining to those categories. The petitioner, however, failed to demonstrate that the AAO's December 21, 2012 decision dismissing her second motion to reopen was in error. In addition, the documentation submitted in support of the third motion did not reveal any fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). Accordingly, the AAO dismissed that motion on June 20, 2013.

The petitioner filed the instant motion to reopen on July 19, 2013. In Part 3 of the Form I-290B, Notice of Appeal or Motion, the petitioner states: "I included Form I-797C from Immigration which show [sic] that my first motion has been sent on time – June 24, 2011, and Immigration Services sent the application back and gave me more time to correct small error." The petitioner submits Form I-797C, Notice of Action, dated June 30, 2011, indicating that the petitioner's Form I-290B was rejected as it had "not been fully completed" and instructing her to "complete the application fully." See 8 C.F.R. § 103.2(a)(7)(i) and (iii) (indicating that a benefit request that is not executed, meaning "fully completed," may be rejected and will not retain a filing date).

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 evidence that was not available and could not have been discovered or presented in the previous proceeding.² A review of the Form I-797C and of the petitioner's statements with the instant motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2).

Regardless, in order to properly file a motion to reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the petitioner must file the motion within 30 days of the decision. The petitioner's first motion, after its proper completion and resubmission, was received by U.S. Citizenship and Immigration Services on July 6, 2011, or 43 days after the AAO's appellate decision was issued. In addition, that first motion was unaccompanied by facts or evidence that could be considered "new" under 8 C.F.R. § 103.5(a)(2) and that established her eligibility at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Lastly, the petitioner's first motion did not contain the statement about whether or not the validity of the unfavorable decision was the subject of any judicial proceeding as required by the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). Accordingly, the first motion was dismissed not only as untimely filed, but also for not meeting all of the requirements of a motion.

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 NEW COLLEGE DICTIONARY, (3d Ed 2008). (Emphasis in original).

In a July 15, 2013 letter accompanying the instant motion, the petitioner further states:

I submitted evidence to prove that the newspapers and magazines where my articles and articles about me were published are indeed major or professional media outlets.

I would like to give an explanation why I did not submit this evidence earlier.

In 2008-2009 evidence as to which newspapers and magazines are major and professional in such countries as Russia, Belarus, and Japan was hard to discover on the Internet. But the Internet's reach and depth in the years since then have expanded dramatically, and it is now possible to find and read articles from newspapers and magazines in any country and to gauge their importance. This resource was not available to the lawyers whom I consulted in 2008. When I asked them how to prove for example that the Japanese newspapers [REDACTED] and [REDACTED] are major, they did not know and advised me that this issue was something that Immigration Services had never raised before.

I believe that I established that I meet at least three of the regulatory categories of evidence pursuant to regulations in 8 C.F.R. § 204.5(h)(3).

The petitioner's instant motion addresses the elements of the May 24, 2011 decision dismissing her appeal and of the June 29, 2012 decision dismissing her first motion. 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 matter presently before the AAO is not the May 24, 2011 and June 29, 2012 decisions, but the June 20, 2013 dismissal of the petitioner's third motion to reopen. The petitioner must overcome the June 20, 2013 dismissal of her third motion before the AAO will revisit the merits of any earlier decision. The petitioner has not done so in this proceeding. The submitted statements and Form I-797C do not point to specific errors in the AAO's most recent decision dated June 20, 2013. Furthermore, the documentation submitted on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2).

The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed, the AAO's June 20, 2013 decision is affirmed, and the petition remains denied.