



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **SEP 05 2013**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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, Nebraska Service Center, denied the employment-based immigrant visa petition on November 20, 2008. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on October 19, 2009, and a motion to reopen on May 21, 2010. The AAO rejected two additional filings on December 13, 2011 and October 9, 2012. The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed. Ultimately, the AAO's May 21, 2010 decision will be affirmed, and the petition will remain denied. Moreover, the AAO will not reopen the matter on its own motion as the petitioner has not overcome the AAO's bases for rejecting the two subsequent filings.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion 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." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." In this case, the petitioner failed to submit a statement regarding if the validity of the decision of the AAO has been or is the subject of any judicial proceeding even though he was placed on notice of this requirement within the October 9, 2012 decision. As such, the motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

The record indicates that while the AAO rejected two filings on December 13, 2011 and October 9, 2012, it issued its most recent decision on May 21, 2010. It is noted that in the May 21, 2010 decision, the AAO properly gave notice to the petitioner that he had 33 days to file the motion. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit, although the regulation allows U.S. Citizenship and Immigration Services (USCIS) to exercise its discretion for late motions if it is shown "that the delay was reasonable and was beyond the control of the applicant or petitioner." 8 C.F.R. § 103.5(a)(1)(i). The present motion was not received until February 26, 2013, or more than 21 months after the May 21, 2010 decision and more than four months after the AAO issued the October 9, 2012 rejection notice. Accordingly, the motion was untimely filed even with respect to the October 9, 2012 notice. The petitioner has not demonstrated that the delay of 21 months, or even four months, was reasonable and beyond his control such that USCIS can exercise discretion to accept the late motion pursuant to the regulation at 8 C.F.R. § 103.5(a)(1)(i). The petitioner claims that his previous filing was late due to errors by a company in which he hired to file his application. The record lacks evidence that a filing service was involved with the petitioner's previous filing as the petitioner signed the Form I-290B USCIS received on February 21, 2012, and the filing lacks any other indication of being filed by anyone other than the petitioner.

The petitioner also requests "an interview" before the AAO. The regulations provide that a party requesting oral argument must explain in writing why oral argument is necessary. Furthermore, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. The petitioner based his request on his feeling that "it is more fair for

[USCIS] to make the decision after meeting me in person and get [sic] to know me in person instead of judging me on paper.” The written record of proceeding, however, fully represents the relevant facts and issues in this matter. Consequently, the request for oral argument is denied.

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.<sup>1</sup> The new facts relating to a motion to reopen must address the AAO’s latest decision dismissing the petitioner’s appeal for failure to identify an error in law or an error in fact within the director’s decision. 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 has not explained why the evidence he submits on motion, evidence that the petitioner is co-owner of a [REDACTED] and evidence that the petitioner is a [REDACTED] is “new” and was not previously obtainable. Consequently, the present motion to reopen must be dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion to reopen is dismissed. The decision of the AAO dated May 21, 2010, is affirmed, and the petition remains denied.

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<sup>1</sup> 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).