

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

(b)(6)

DATE: **APR 16 2014**

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:

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 employment-based immigrant visa petition and affirmed that decision on motion. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on December 18, 2012, and dismissed two subsequently filed motions to reopen and motions to reconsider on June 10, 2013 and October 2, 2013. The matter is now before the AAO on a third motion to reopen and a motion to reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition will remain denied.

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." The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." The petitioner did not submit a statement regarding whether the validity of the decision of the AAO has been or is the subject of any judicial proceeding.

Notwithstanding the above, in the petitioner's January 17, 2013 motions, the petitioner submitted a brief primarily addressing the director's decision. The petitioner did not submit any documentary evidence in support of that motion and did not address the AAO's dismissal of the petitioner's appeal. The AAO dismissed the motion, stating that it only considers arguments and evidence relating to the grounds underlying the AAO's most recent decision and that the petitioner's opportunity to contest the director's findings was the previously filed appeal.

In the petitioner's July 1, 2013 motions, the petitioner submitted a brief and generally claimed that the AAO erred in its June 10, 2013 decision. However, the petitioner did not submit any documentary evidence in support of the motion to reopen, and the petitioner did not explain how the AAO's dismissal of the previous motions was in error, nor did the petitioner provide any arguments or refer to any legal authority demonstrating how the AAO's dismissal of the prior motions was based on an incorrect application of law or USCIS policy in support of the motion to reconsider. Nonetheless, the AAO further concluded that the petitioner's June 10, 2013 filing did not sufficiently address the merits of the petitioner's eligibility.

Regarding the petitioner's current motions, the petitioner again must establish that the AAO's most recent decision, the decision dismissing the petitioner's motion to reopen and motion to reconsider on October 2, 2013, was itself in error. The petitioner has not done so in this proceeding.

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). 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." *Abudu*, 485 U.S. at 110.

The petitioner did not submit affidavits or other documentary evidence as required pursuant to the regulation at 8 C.F.R. § 103.5(a)(2). Therefore, the petitioner's filing does not meet the applicable

requirements for a motion to reopen and the motion to reopen will be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *Compare id.* and 8 C.F.R. § 103.5(a)(2).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the “additional legal arguments” that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

On motion, the petitioner briefly restates previous claims that he meets six of the criteria at the regulation at 8 C.F.R. § 204.5(h)(3). However, the petitioner did not provide any arguments or refer to any legal authority demonstrating that the AAO’s dismissal of the prior motions on October 2, 2013 was based on an incorrect application of law or USCIS policy pursuant to the regulation at 8 C.F.R. § 103.5(a)(3). Again, the petitioner makes no argument that explains how the AAO’s dismissal of the motions was in error. Although the AAO thoroughly analyzed the documentary evidence and addressed each of the petitioner’s claims in the previous decisions, the petitioner provided no explanation as to how the AAO erred in any of its prior decisions.

As noted above, a motion to reconsider must include specific allegations as to how the AAO erred as a matter of fact or law in its prior decision, and it must be supported by pertinent legal authority. Because the petitioner has failed to raise such allegations of error in the motion to reconsider, the AAO will dismiss the motion to reconsider.

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 and the motion to reconsider are dismissed, the decision of the AAO dated October 2, 2013 is affirmed, and the petition remains denied.