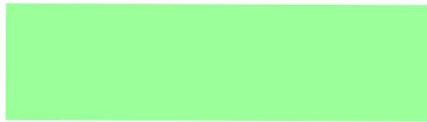




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **OCT 15 2014** Office: TEXAS SERVICE CENTER

FILE:

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 (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 on January 18, 2013. On June 21, 2013, the Administrative Appeals Office (AAO) upheld the director's decision, and dismissed the appeal. On November 29, 2013, we granted the subsequent motion to reopen and reconsider, but affirmed the decision after a full review on the merits. The petitioner filed a second motion on January 2, 2014, which we dismissed on June 25, 2014. The matter is now before us on a third motion. The current motion is a motion to reopen. We will dismiss the motion.

"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." 8 C.F.R. § 103.5(a)(2). Our analysis within this motion is limited to the issues contained in the most recent decision, the decision on the motion to reopen and reconsider dated June 25, 2014. The following are the issues discussed in the June 25, 2014 decision that the petitioner must address within this motion:

- The evidence the petitioner submitted relating to his educational and professional credentials was not new evidence relating to the June 25, 2014 motion to reopen, and, while demonstrating his past training, did not demonstrate that his proposed employment was in education;
- The evidence relating to the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) from The Hague Academy's directed studies program did not satisfy the regulatory requirements;
- The evidence the petitioner submitted relating to the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi) did not constitute new evidence as the petitioner had previously submitted similar evidence pertaining to the same facts, which we had previously addressed;
- The evidence under the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii) was not new evidence that we had not previously considered; and
- The petitioner was not persuasive that our prior citation of *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 219, n.6 (Assoc. Comm'r 1998) (*NYSDOT*) was in error because that decision involved a lesser classification because it follows that evidence that is insufficient to meet the lower standard of a lesser classification is also insufficient to meet the higher standard in the classification the petitioner seeks.

Within the statement accompanying the present motion, the petitioner discusses his new degree from the [REDACTED] but he did not address our findings within the June 25, 2014 motion decision that his previously submitted credentials demonstrated only his training, and not his future occupation. The petitioner received his latest degree, a Master of Business Administration, from the [REDACTED] on May 19, 2014, approximately four years after filing the instant petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). While the

petitioner expressed interest in a teaching international law workshop in 2009 and participated in this workshop in 2011, the 2011 workshop postdates the filing of the petition and, regardless, it remains that the petitioner indicated on the Form I-140 petition that he sought to enter the United States to work as a lawyer. Finally, the petitioner has not explained how his membership in the American Bar Association's [REDACTED]

[REDACTED] demonstrates that his proposed employment would be in the field of education.

Regarding our determination that the petitioner's participation or selection to The Hague Academy's directed studies program is insufficient to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner states:

In fact, the petitioner was among the eleven finalists for the Academy's worldwide prestigious high-level diploma. This is an extremely limited membership group, candidates of which are selected from all over the world and limited to about ten finalists per year. This "membership" should be considered as one requiring outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

That the petitioner claims that his evidence is sufficient and repeats the regulatory language does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. Att'y Gen.*, 745 F. Supp. 9, 17 (D.D.C. 1990). Additionally, the petitioner has not submitted new facts relating to the June 25, 2015 motion decision, and therefore, has not met the requirements of a motion to reopen. Further, the new evidence in the form of email correspondence between the petitioner and a representative of The Hague Academy does not demonstrate that the petitioner has satisfied the plain language requirements of this criterion as the email does not demonstrate that this program is an association in the petitioner's field, nor does the email establish that this program requires outstanding achievements of those participating in the program, as judged by recognized national or international experts. 8 C.F.R § 204.5(h)(3)(ii).

Regarding the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), neither the petitioner's present motion statement, nor its accompanying evidence relate back to the most recent decision in which we indicated that the evidence relating to the most recent motion was not new evidence. As noted above, the petitioner must first address and overcome the deficiencies in our most recent decision before he can move to the merits of his eligibility claim. Regardless, the petitioner does not explain how the 2013 Policy Recommendations for New York City's Next Mayor from the New York City Bar, which does not name or cite the petitioner, demonstrates that the petitioner had performed in a leading or critical role for New York City or any other distinguished organization or establishment.

The petitioner did not address the scholarly articles criterion or our explanation of our reliance on *NYSDOT* within the June 25, 2014 decision. Thus, he has not overcome those concerns as stated in our last 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, 108 (1988)); see also *Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). “There is a strong public interest in bringing litigation to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases.” *INS v. Abudu*, 485 at 107. Based on its discretion, “[T]he [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 . . . by aliens creative and fertile enough to continuously produce new and material facts sufficient to establish a prima facie case.” *Id.* at 108. The result also needlessly expends the time and efforts of the triers of fact who must attend to the filing requests. *Id.* A party seeking to reopen a proceeding bears a “heavy burden.” *Id.* at 110. With the current motion, the petitioner has not met that burden.

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. Our decision dated June 25, 2014, is affirmed, and the petition remains denied.