



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: OCT 03 2013

Office: NEBRASKA 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, Nebraska Service Center, revoked the approval of the employment-based immigrant visa petition on October 19, 2010. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of that decision on May 1, 2012, and dismissed a subsequent motion to reopen on December 17, 2012. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion to reopen will be dismissed. The motion to reconsider will be dismissed. Ultimately, the previous decision of the AAO will be affirmed, and the petition will remain revoked.

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 subject of any judicial proceeding. As such, the motions must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

The petitioner requested additional time to submit a brief to accompany her motion. Although the regulation at 8 C.F.R. § 103.5(a)(1)(iii) allows for the motion to be accompanied by a brief, the regulations do not allow additional time to submit a brief or additional evidence after the filing of a motion. Compare 8 C.F.R. § 103.3(a)(2)(vii) (allowing the AAO to grant additional time to submit a brief after the filing of an appeal). Page 2 of the Form I-290B instructions clearly explains that "[a]ny additional evidence must be submitted with the motion" and there is no provision for an extension.

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.¹ New evidence is considered to be material to the present case and not previously submitted. This "new" evidence is expected to convey new value or new meaning to the case. On motion, the petitioner submits evidence relating to her daughter's school achievements. The evidence relating to the petitioner's daughter is not relevant to the AAO's most recent decision. The relevant topics the petitioner may address within this motion relate to ineffective assistance of prior counsel and whether the evidence submitted with the previous motion constituted new 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. *Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004); *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS*

¹ 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).

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 of deportation 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 wastes 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.

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 U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The very nature of a motion to reconsider is that the original decision was defective in some regard. See *Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006). A motion to reconsider is based on the existing record and petitioners may not introduce new facts or new evidence relative to their arguments. 8 C.F.R. § 103.5(a)(3).

Additionally, 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. at 58. 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. The petitioner raises no legal arguments in her most recent filing.

The petitioner has not submitted a motion that addresses the reasons contained in the motion dismissal dated December 17, 2012 either with new evidence or by raising legal arguments. Therefore, her motions 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.



(b)(6)

NON-PRECEDENT DECISION

Page 4

ORDER: The motion to reopen is dismissed. The motion to reconsider is dismissed. The decision of the AAO dated December 17, 2012, is affirmed, and the petition remains revoked.