



U.S. Citizenship
and Immigration
Services

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DATE: **OCT 02 2012** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O).

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The petitioner subsequently filed a combined motion to reopen and reconsider. The AAO granted the motion and affirmed its previous decision. The matter is now before the AAO on a second motion to reopen. The AAO will dismiss the motion.

The petitioner, a gymnastics instruction center, filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(O)(i), as an alien of extraordinary ability in athletics. The petitioner seeks to employ the beneficiary in the position of Gymnastics Trainer/Coach for a period of two years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has received "sustained national or international acclaim" or to demonstrate that he is one of the small percentage who has risen to the very top of his field as a gymnastics coach. On April 5, 2011, the AAO dismissed the petitioner's subsequent appeal. The AAO emphasized that the majority of the evidence in the record related to the beneficiary's career as a competitive athlete and circus performer, rather than to his achievements and national or international recognition as a gymnastics coach or trainer.

The petitioner subsequently filed a combined motion to reopen and reconsider, which addressed specific evidentiary deficiencies that were raised in the AAO's decision and submitted additional evidence pertaining to the evidentiary criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (2), (4) and (7). The AAO found that although the petitioner indicated that it was seeking to file a motion to reconsider, the petitioner offered new evidence for the AAO's consideration and did not claim that the AAO's adverse decision was incorrect based on the evidence of record at the time of the initial decision. Accordingly, the motion did not meet the requirements of a motion to reconsider pursuant to 8 C.F.R. § 103.5(a)(4). In addition, the AAO found that the petitioner's motion to reopen failed to state any new facts and was not supported by affidavits or other evidence demonstrating that the beneficiary had sustained national or international acclaim at the very top of the field of gymnastics coaching. A review of the documentation submitted in support of the petitioner's motion to reopen revealed no fact that could be considered "new" pursuant to the regulation at 8 C.F.R. § 103.5(a)(2). Therefore, the AAO granted the motion and affirmed its prior decision.

The petitioner filed the instant motion to reopen, stating that new information has become available regarding the petition. Specifically, counsel asserts that a letter has been requested, but not yet received, that will "address the three necessary requirements to illustrate that the beneficiary qualifies for the O-1 visa status." Counsel stated some of the information that he anticipated the letter would contain. However, the AAO notes that the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Counsel stated the new information would be forwarded within 20 days of filing the instant motion. Counsel has not forwarded any affidavits or other documentary evidence in support of the motion to reopen.

A motion to reopen must state the new facts to be proven in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

In addition, 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 instance, the petitioner failed to submit a statement about whether or not the validity of the decision of the AAO has been or is subject of any judicial proceeding. As such, the motion must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

Even if the petitioner had filed a motion that meets the regulatory requirements at 8 C.F.R. § 103.5(a)(4), the AAO would dismiss the motion.

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). The petitioner’s present motion has failed to state any new facts and is not supported by affidavits or other evidence demonstrating that the beneficiary has sustained national or international acclaim at the very top of the field of gymnastics coaching.

The petitioner seeks to qualify the beneficiary for a highly restrictive visa classification, intended for individuals already at the top of their respective fields. Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field.

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. With the current motion, the petitioner has not met that burden. Accordingly, the motion to reopen will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion to reopen is dismissed, the decision of the AAO dated April 5, 2011 is affirmed, and the petition remains denied.