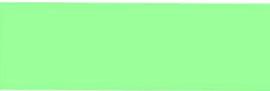


(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **MAY 21 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary:

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:



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 California Service Center Director denied the nonimmigrant visa petition. The petitioner filed an appeal before the Administrative Appeals Office (AAO), which was dismissed on April 2, 2013. Most recently, the AAO dismissed the petitioner's motion to reconsider in a decision dated February 18, 2014. The matter is once again before the AAO on a motion to reconsider. The AAO will dismiss the instant motion to reconsider.

In the AAO's decision dated April 2, 2013 dismissing the appeal, the AAO found that the petitioner either abandoned its claims of eligibility or failed to establish the beneficiary's eligibility under the following criteria: 8 C.F.R. § 214.2(o)(3)(iii)(B)(1); 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), 8 C.F.R. § 214.2(o)(3)(iii)(B)(4); 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), 8 C.F.R. § 214.2(o)(3)(iii)(B)(7); 8 C.F.R. § 214.2(o)(3)(iii)(B)(8); and 8 C.F.R. § 214.2(o)(3)(iii)(C). The AAO observed that the petitioner never claimed eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(A), 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), or 8 C.F.R. § 214.2(o)(3)(iii)(B)(6), and had not established eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(C).

The petitioner filed a motion to reconsider, contesting only the AAO's findings with respect to the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) and (7). In the AAO decision dated February 18, 2014, the AAO reaffirmed its previous findings that the petitioner failed to establish eligibility under 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(3) and (7), and found all other claims abandoned. Significantly, the AAO concluded that, even if the AAO had found the petitioner's assertions regarding the evidence under 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) and (7) to be persuasive, the petitioner would still have failed to establish eligibility under at least three of the regulatory criteria as required by the regulation. The AAO stated: "Therefore, the proper conclusion in any case is that the [petitioner] has failed to satisfy the regulatory requirement of three types of evidence."

In the instant motion to reconsider, the petitioner asserts that the AAO erred in its interpretation of the law and its consideration of evidence under the criterion at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(7). The petitioner does not contest or address the AAO's finding with respect to the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), thus abandoning its claim of eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).¹ As such, the only remaining criterion in which the petitioner claims eligibility and has not abandoned is 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

Upon review, the petitioner has failed to meet the requirements of a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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

¹ *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

application of law or Service policy. *A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.* (Emphasis added.)

In order to establish eligibility for O-1 classification as an alien of extraordinary ability in the field of business, the petitioner must establish the beneficiary's eligibility under *at least three* of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).² Here, the petitioner only asserts eligibility under one criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B), specifically, 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). Therefore, even if the petitioner were able to establish eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), the petitioner has not explained and established how the AAO's ultimate conclusion that the petitioner failed to satisfy the regulatory requirement of three types of evidence was incorrect. As such, the instant motion fails to meet the regulatory requirements for a motion to reconsider pursuant to 8 C.F.R. § 103.5(a)(3). The instant motion to reconsider must be dismissed.³

Finally, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions 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." The petitioner's previous motion did not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C), nor does the current motion. The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See 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 movant has not met that burden. The motion will be dismissed, the proceedings will not be reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reconsider is dismissed.

² The petitioner has never claimed eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(A) or 8 C.F.R. § 214.2(o)(3)(iii)(C). *See supra* footnote 1.

³ Since the instant motion to reconsider is dismissed, the AAO will not reconsider the merits of the petitioner's claims under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).