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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**



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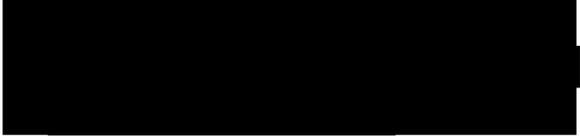


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Date: **MAR 29 2012** Office: CALIFORNIA SERVICE CENTER File 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:


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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, California Service Center, denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is now before the AAO on a motion to reopen. The AAO will dismiss the motion.

The petitioner, a martial arts production, training and production company, filed this nonimmigrant petition seeking classification of the beneficiary under section 101(a)(15)(P)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(iii), as an artist or entertainer in a culturally unique program. The petitioner seeks to employ the beneficiaries as martial artists for a period of one year.

The director denied the petition, concluding that the petitioner failed to submit evidence that the beneficiaries possess culturally unique skills pursuant to 8 C.F.R. § 214.2(p)(6)(ii)(A) or (B). The director further noted that the petitioner failed to submit a written consultation from an appropriate labor organization. This ground of denial was withdrawn by the AAO.

The AAO dismissed the petitioner's appeal on June 24, 2011, and affirmed the denial of the petition on the first ground of denial.

The petitioner filed the instant motion to reopen on July 27, 2011. On the Form I-290B, Notice of Appeal or Motion, the petitioner states:

We have additional evidence about the beneficiaries indicating that they are Chinese martial arts masters engaged in culturally unique program in the United States. Please see attached certificates of the beneficiaries for details.

The petitioner provides copies of previously submitted evidence along with additional evidence not previously submitted. The evidence submitted on motion consists of a "Certificate of Appreciation" issued to both beneficiaries for serving as panel judges in the 2011 USAWKF National Wushu Taolu Team Trials and Golden States International Championships, June 25-26, 2011, and for recognition of their judging at the 19th Annual Chinese Martial Arts Tournament, May 7, 2011. The AAO notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The beneficiaries earned the noted certificates after the AAO issued its final decision on appeal, and more than a year after the initial I-129 filing. Thus, the AAO will not consider them as evidence of eligibility.

The petitioner also submitted a letter from the Asian Immigrant Women Advocates thanking the beneficiaries for their performance of Shaolin Kung Fu at their year-end party, December 18, 2010. The letter is dated December 20, 2010 and the petitioner does not explain why he failed to submit this evidence prior to this date.

Finally, the petitioner submits on motion a certificate from the Chinese American Culture Club thanking the beneficiaries for performing in the 32nd Annual Chinese New Year Celebration Festival held on March 6,

2010. Again, it is unclear why this evidence is being submitted on motion after the appeal has been dismissed. There is no evidence that this evidence is new or was not available at the time of filing.

Although the petitioner acknowledges the AAO's dismissal of the petitioner's appeal, the brief contains no direct reference to the specific findings made in the AAO's decision issued on June 24, 2011. Rather, counsel essentially requests that the AAO conduct a *de novo* review of the record.

The regulation at 8 C.F.R. § 103.5(a)(2) states:

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.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

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. 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.

The regulation at 8 C.F.R. § 103.5(a)(4) states, in pertinent part: "A motion that does not meet applicable requirements shall be dismissed."

The instant motion makes no reference to the findings made in the AAO's decision and the specific deficiencies remarked upon therein, no new facts provided to support a motion to reopen, and no specific reasons stated for reconsideration. Accordingly, the motion will be dismissed for failing to meet the applicable requirements.

The purpose of a motion to reopen or motion to reconsider is different from the purpose of an appeal. While the AAO conducts a comprehensive, *de novo* review of the entire record on appeal, a review in the case of a motion to reopen is strictly limited to an examination of any new facts, which must be supported by affidavits and documentary evidence. A motion for reconsideration must state the reasons for re-consideration and be supported by pertinent precedent decisions establishing that the decision was based on an incorrect application of law or USCIS policy. There is no regulatory or statutory provision that allows a petitioner more than one appellate decision per petition filed. In the present matter, an appellate decision was issued and the deficiencies were expressly stated.

Rather, the AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts or documented sufficient reasons, supported by pertinent precedent decisions, to warrant the re-opening or reconsideration of the AAO's decision issued on June 24, 2011.

In addition, 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 motion does not contain this statement. 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.

As a final note, the proper filing of a motion to reopen and/or reconsider does not stay the AAO's prior decision to dismiss an appeal or extend a beneficiary's previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the motion will be dismissed, the proceedings will not be reopened or reconsidered, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.