

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**



D9

Date: **NOV 03 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

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 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, 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/reconsider. The AAO will dismiss the motion.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking P-1S classification of the beneficiary as essential support personnel pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P).¹ The petitioner is self-described as a company engaged in event promotions and production of a promotional clothing line. It seeks to temporarily employ the beneficiary as a professional boxing manager to provide support services to a P-1 athlete () for a period of two years.²

The director denied the petition, concluding that the beneficiary does not qualify as an essential support alien under the regulations because the petitioner did not establish that the beneficiary will be performing services that are essential to the successful performance of services by the principal P-1 athlete and cannot be performed by a United States worker. Specifically, the director noted the record showed the beneficiary to be one of three persons, the others being () and () (a United States worker), listed in the record as boxing managers of the P-1 athlete. In addition, the director noted that the petitioner had filed a concurrent petition for P-1S classification of () as essential support personnel to the P-1 athlete.³ Therefore, the director concluded that the petitioner failed to establish that the beneficiary will be performing services that are essential to the successful performance of services by the principal P-1 athlete and cannot be performed by a United States worker. The AAO dismissed the petitioner's appeal on May 1, 2012, and affirmed the denial of the petition on the stated grounds. The petitioner filed the instant motion on May 30, 2012, asserting that the beneficiary will perform qualifying essential support services. The petitioner submits additional evidence in support of the appeal.

In the Form I-290B, Notice of Appeal or Motion, and accompanying brief counsel states that () is not the P-1 athlete's sole manager, but that, pursuant to a January 15, 2010 contract, () and the beneficiary agreed to jointly manage the P-1 athlete, with the beneficiary as the P-1 athlete's primary manager. The AAO notes that in the January 15, 2010 contract, the beneficiary and () d/b/a (), agreed to jointly manage the P-1 athlete with (). Therefore, the AAO finds the petitioner has not addressed the director's finding that the petitioner has also asserted that () is the beneficiary's primary manager.

On appeal, the petitioner submits the P-1 athlete's current contract with () signed by the beneficiary on December 28, 2011 both as witness and as the P-1 athlete's manager, and signed and notarized by the P-1 athlete on January 9, 2012, almost two years subsequent to filing the petition.

¹ On the Form I-129 petition, the petitioner indicated that it was seeking a continuation of previously approved employment without change with the same employer, and an extension of the beneficiary's stay.

² Petitions for essential support personnel to P-1, P-2, and P-3 aliens may not exceed one year. 8 C.F.R. § 214.2(p)(8)(iii)(E).

³ The record contains a consultation letter from the International Boxing Association (IBA) on behalf of () () P-1S classification as the boxing manager of the P-1 athlete and six additional boxers.

The AAO will not accept as evidence in this matter the P-1 athlete's latest contract with Star Boxing Inc. 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).

On appeal the petitioner also submitted an undated letter from [REDACTED] stating that [REDACTED] and [the beneficiary] are both actively involved in [the P-1 athlete's] career as trainer and manager" and that [REDACTED] is not the sole manager of [the P-1 athlete] rather he is part of the management and promotion team." In addition, the petitioner submitted an undated letter from [REDACTED] of the [REDACTED] and the United States [REDACTED] stating that "[the P-1 athlete], [REDACTED] and [the beneficiary] . . . have been working together as fighter, trainer and manager from the beginning of [the P-1 athlete's] career to date. I can confirm that [REDACTED] and [the beneficiary] are the essential part of [the P-1 athlete's] team." The AAO finds that these letters do not explain the inconsistencies in the record regarding whether the beneficiary is the professional boxing manager of the P-1 athlete.

Finally, the petitioner submitted a May 23, 2012 letter from the P-1 athlete who states "[the beneficiary] has been my primary manager since 2000. . . She negotiates my fight contracts and promotional contracts . . . and she coordinates sponsorship opportunities and handles media inquiries as well as any and all dealings with the state athletic commissions and other boxing sanctioning bodies." However, as noted in our prior decision, this statement is inconsistent with the P-1 athlete's statement in an interview dated March 30, 2010 with *Boxing News* submitted by the petitioner, in which the P-1 athlete stated "I want to thank my team of managers, [REDACTED] and [REDACTED] for giving me everything I have asked for and for making this fight happen." In addition, the petitioner provided no explanation as to why duties such as negotiating fight contracts and promotional contracts, coordinating sponsorship opportunities, handling media inquiries and communicating with the state athletic commissions and other boxing sanctioning bodies, cannot readily be performed by a United States worker, or how such services are essential to the athlete's performance.⁴

The regulation at 8 C.F.R. § 214.2(p)(3), provides, in pertinent part:

Essential support alien means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, [or P-3] alien. Such alien must have appropriate qualifications to perform the services critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

Accordingly, the petitioner must establish that the support alien will provide support to a P alien and is essential to the success of the P alien. The petitioner must also establish that beneficiary is qualified to perform the services and the services cannot be readily performed by United States workers.

⁴ The remaining evidence that the petitioner submits with the motion has previously been submitted into the record.

The regulation at 8 C.F.R. § 214.2(p)(4)(iv) states:

- (A) *General.* An essential support alien as defined [above] may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.
- (B) Evidentiary criteria for a P-1 essential support petition. A petition for P-1 essential support personnel must be accompanied by:
 - (1) A consultation for a labor organization with expertise in the area of the alien's skill;
 - (2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
 - (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

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 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. As such, counsel's previously submitted arguments based on the Service Center director's original decision cannot be considered "new" facts or provide a reason for reconsideration of the AAO's appellate decision. The AAO previously conducted a *de novo* review of the entire record of proceeding and has already addressed the arguments contained in counsel's brief. 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 May 1, 2012. In the current proceeding, counsel has not fully addressed the deficiencies and inconsistencies in the record, which are the grounds stated for dismissal of the appeal, nor does the evidence submitted with the motion overcome them. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no documentary evidence to overcome the conflicting statements made regarding the true nature of the support services the beneficiary would provide in the United States. Accordingly, the petitioner has failed to establish the beneficiary's eligibility as an essential support worker.

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 further 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).

As a final note, the AAO acknowledges that USCIS has approved a prior petition granting the beneficiary P-1S classification as an essential support alien. The prior approval does not preclude USCIS from denying an extension of the original visa based on a reassessment of the beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, previously approved a visa petition does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approval by denying the request to extend the beneficiary's status.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.