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

Dg

[redacted]

Date: OCT 2 6 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on a motion to reopen/reconsider. The AAO will dismiss the motion.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the beneficiary as an internationally-recognized athlete under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner, a fitness and training facility, seeks to employ the beneficiary as a professional Jiu Jitsu instructor for a period of five years.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary as an individual athlete has achieved international recognition in his sport based on his own reputation; and (2) that the beneficiary is coming to the United States solely to participate in an event or events requiring the participation of an internationally recognized athlete. The AAO dismissed the petitioner's appeal on June 15, 2012, and affirmed the denial of the petition on all stated grounds.

The petitioner filed the instant motion on July 17, 2012. Counsel indicated that a brief and/or additional evidence would be submitted to the AAO within thirty days. Where asked to briefly state the basis for the motion on the Form I-290B, Notice of Appeal or Motion, counsel stated "As will be further documented within the brief to be filed with the AAO by August 15, 2012, the AAO erred in its determination that [redacted] does not qualify as an internationally recognized athlete." On August 14, 2012, counsel requested and was granted a 60-day extension to submit a brief and/or additional evidence. On October 11, 2012, counsel requested an additional 60-day extension. The AAO denied counsel's request on October 17, 2012. As of this date, no brief or additional evidence has been received.

Although counsel acknowledges the AAO's dismissal of the petitioner's appeal, counsel's statement in the motion contains no direct reference to the specific findings made in the AAO's decision issued on June 15, 2012. 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 consists of the above-referenced statement from counsel. There is no reference made 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. The petitioner has not submitted any further evidence. 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. 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 June 15, 2012. In the current proceeding, counsel has not even explicitly acknowledged the grounds stated for dismissal of the appeal, much less attempted to overcome them.

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.