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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

Date: **DEC 12 2013** 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)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

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 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 filed the 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 entertainer coming to the United States to perform under a culturally unique program. The petitioner, a martial arts school, seeks to employ the beneficiary as a martial arts instructor for a period of one year.

The director denied the petition, concluding that the petitioner failed to submit evidence that the beneficiary possesses culturally unique skills as an artist or entertainer or that all of his performances or presentations would be culturally unique events. The director further found that the beneficiary is neither an artist nor an entertainer, but an athlete and athletic coach, and as such, his proposed activities do not fall within the plain language of the statute at section 101(a)(15)(P)(iii)(I) of the Act, or within the regulatory definition of "arts."

The director further noted the evidence submitted by the petitioner in response to the director's request for evidence (RFE) issued on March 22, 2012, including flyers, letters and certificates of appreciation, while establishing that the beneficiary is an accomplished teacher of martial arts, failed to establish that the beneficiary's duties in the proffered position would constitute "a culturally unique style of artistic expression, methodology or medium as contemplated by the regulations for P-3 classification." The AAO summarily dismissed the petitioner's appeal on May 14, 2013, and affirmed the denial of the petition on all stated grounds.

The petitioner filed the instant motion to reopen on May 29, 2013. The petitioner provides additional evidence relating to the beneficiary's past participation in Chinese cultural events referred to in counsel's initial support letter, including a program and a promotional brochure from the show [REDACTED] and an article reviewing the show dated January 16, 2009 from the website www.nypost.com. Counsel indicates that all eligibility requirements for P-3 status have been met. In an attachment to the Form I-290B, Notice of Appeal or Motion, counsel states:

As a performer, [the beneficiary] toured the U.S. in a theatrical production of the show [REDACTED] . . . an artistic production that incorporates martial arts (specifically in this case [REDACTED] into a dramatic format. [REDACTED] is unique to China. [The beneficiary] is an artist who has appeared in culturally unique performances all over the United States. The same skills used by the beneficiary in [REDACTED] are the same as those he is teaching. That this particular mode of cultural expression also has athletic benefits should not be construed to mean that his is primarily an athletic endeavor. . . [The beneficiary intends to teach or coach this culturally unique art form, conveying the performance skills he used to students.

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)(4) states, in pertinent part: "A motion that does not meet applicable requirements shall be dismissed."

The AAO's review in this matter is limited to the narrow issue of whether the petitioner has presented and documented new facts to warrant the re-opening of the AAO's decision issued on May 14, 2013. Motions for the reopening 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 instant motion consists of the above-referenced statement from counsel and the above-referenced evidence. There is no reference made to the AAO's decision and the specific deficiencies remarked upon therein, or to the specific findings made in director's decision issued on August 14, 2012. Rather, counsel essentially requests that the AAO conduct a *de novo* review of the record. The petitioner has not provided new facts to support a motion to reopen. 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). Accordingly, the motion will be dismissed for failing to meet the applicable requirements.

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.

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, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.