**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals*
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: JUN 2 5 2014 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

APPLICATION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A).

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Texas Service Center, denied the immigrant visa petition. On June 21, 2013, the Administrative Appeals Office (AAO) dismissed the appeal. The AAO granted the subsequent motion to reopen and reconsider, but affirmed the decision after a full review on the merits. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be dismissed.

The petitioner seeks classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A) to practice law. The director determined that the petitioner has not established his eligibility as an alien of extraordinary ability. We reaffirmed that determination on appeal and again on motion and, in addition, concluded that the petitioner's occupation did not fall under one of the categories Congress described for the extraordinary ability classification.

Regarding motions to reopen or reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(ii) states in relevant part: "The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction." The latest decision was our November 29, 2013 decision granting the initial motion to reopen and reconsider and reaffirming the bases for dismissing the appeal. Therefore, a successful motion must overcome our most recent decision.

To the extent that the petitioner intends the current motion to be a motion to reopen, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *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." *Abudu*, 485 U.S. at 110. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

To the extent that the petitioner intends the current motion to be a motion to reconsider, a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the original decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). In essence, a motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new evidence. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

Motion to Reopen

In support of the motion to reopen, the petitioner submits evidence to establish that his area of expertise or his duties as a lawyer fall under the purview of "business" or "education," pursuant to the statutory requirement that an alien demonstrate "extraordinary ability in the sciences, arts, education, business or athletics." 203(b)(1)(A) of the Act. In addition, the petitioner submits evidence in support of the criteria for membership, scholarly articles, and leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(ii), (vi), and (viii).

As an initial matter, to demonstrate that he is an alien of extraordinary ability in education and/or business, the petitions submits the following evidence: (1) a Notice of Certification from the New York

State Board of Law Examiners; (2) a Bachelor in International Economic Law diploma in English from the (3) a certificate in Chinese; (4) a Master of Law (LLM) in Transnational Business Practice diploma from the (5) an April 22, 2010 release from the elating to ranking results of some of the school's programs; (7) a printed webpage from (8) a printed webpage from the and (9) a letter from the The record also contains the petitioner's Doctor of Juridical Sciences (S.J.D) from

Items (1)-(4) in the numbered list that relate to his educational and professional credentials are not new evidence. Such evidence demonstrates his past training in a specialty area of law, but the petitioner has not established that his current legal practice and expertise fall under the purview of "business" or "education." In support of his assertion that his S.J.D. degree is geared primarily to those intending to pursue a career in academia, the petitioner submitted printed webpages from and school of law with information regarding the S.J.D. program at their respective institutions. The petitioner did not receive his S.J.D. from either of those law schools. Regardless, the fact that "most" of S.J.D. graduates from will secure teaching positions or that the program is "geared primarily to those intending to pursue a career in academia" does not demonstrate that the petitioner, who has indicated only that he will practice law, sought to come to the United States to teach at the time he filed his petition in 2010. The petitioner has not submitted evidence indicating that he is seeking or that he has procured a position as a law school professor or other position that falls within the purview of "education." The petitioner submits a letter from the ndicating that he has been appointed to a volunteer term as a board member for his law school's alumni association. Such an appointment is not an academic teaching appointment at the law school and does not fall within the purview of "education."

As new evidence pertaining to the regulatory criterion for membership under 8 C.F.R. § 204.5(h)(3)(ii), the petitioner submitted a printed webpage from the official website of the about the summer program and the printed webpage from the same website listing the members of the Curatorium, the scientific board of the The petitioner is not listed as a member. Rather, the record contains evidence that the petitioner was admitted to the academy's directed studies program in 2010. The petitioner's participation or selection to the directed studies program does not meet the requirements of the regulation. Admission to and certification from an educational program, even a competitive one, is not a qualifying membership in an association. *See Kazarian v. USCIS,* 596 F.3d 1115, 1221 (9th Cir. 2010) (citing *Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir. 2008) for the proposition that USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5). Notably, a degree is a criterion for aliens of exceptional ability, a lesser classification pursuant to section 203(b)(2) of the Act, which also includes a separate criterion for memberships. *Compare* 8 C.F.R. § 204.6(k)(3)(ii)(A); (E). Thus, the record supports the conclusion from our previous decision determining that the petitioner has not satisfied the requirements for the membership criterion.

As evidence pertaining to the criterion for scholarly articles, the petitioner also submits a document with the search results from *Google Scholar* and a *Wikipedia* article about *Google Scholar*. The evidence is

not new evidence. In support of the previous motion relating to the petitioner's eligibility as an alien of extraordinary abilities, the petitioner submitted the search results from *Google Scholar,* using nearly identical search terms, demonstrating that his dissertation is available at Moreover, the online article about *Google Scholar* lacks probative value because *Wikipedia* is an online open-content website and the site makes no guarantee of validity. [1] *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d 909 (8th Cir. 2008). Accordingly, we have fully considered the results of the *Google Scholar* search previously and the petitioner does not meet the basic requirements for reopening. 8 C.F.R. § 103.5(a)(2) (requiring a motion to reopen to state new facts). Moreover, even if we considered the *Wikipedia* information, it merely indicates that Google Scholar "is a freely accessible web search engine that indexes the full text of scholarly literature across an array of publishing formats and disciplines." Thus, this information does not support a conclusion that any article indexed on Google Scholar appeared in a professional or major trade publication or other major media as required under 8 C.F.R. § 204.5(h)(3)(vi).

Similarly, the petitioner's evidence on motion relating to the claim of leading or critical role for an organization with a distinguished reputation is not new evidence. On motion, the petitioner asserts that the badge reflects an issue date of February 2010, prior to the filing of the Form I-140 petition. However, our November 29, 2013 decision specifically mentioned and considered the February 2010 badge. Consequently, evidence of the 2010 badge is not new evidence pursuant to 8 C.F.R. § 103.5(a)(2). In that decision dismissing the prior motion to reopen, we specifically determined that the petitioner failed to submit a letter from the New York City Bar Association (NYCBA) specifying how the petitioner contributed to that association in a way that is significant to the association's outcome. The petitioner includes a letter from the NYCBA, which was previously submitted and entered into the record. While the letter confirms that the organization has requested an pass for the petitioner, it does not indicate that the petitioner served in a leading or critical role by attending events.

Accordingly, the petitioner has not provided relevant new evidence along with the motion to warrant reopening pursuant to 8 C.F.R. § 103.5(a)(2).

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[1] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

*See* http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on June 16, 2014, a copy of which is incorporated into the record of proceeding.

Motion to Reconsider

To the extent that the petitioner intends the current motion to be considered as a motion to reconsider, the petitioner asserts that there was a legal error in partly relying upon *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm'r 1998) (*NYSDOT*) to conclude that the petitioner's S.J.D. degree does not qualify as a one-time achievement, specifically a major internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). The petitioner asserts that there was legal error because that case discusses the insufficiency of a second preference visa classification while the pending matter is about a first preference classification. Our initial denial on the appeal issued on June 21, 2013, as well as the subsequent denial on the motion, specifically discussed *NYSDOT* as part of the analysis for a lesser nationally or internationally recognized prize or award. Thus, the petitioner needed to raise any legal challenge relating to the use of that case on the first motion, which we dismissed on November 29, 2013. Regardless, *NYSDOT* stated that academic performance cannot alone satisfy the national interest threshold, which requires a past history of demonstrable achievement with some degree of influence on the field as a whole. *NYSDOT,* 22 I&N Dec. at 219, n6. If academic performance alone cannot establish the type of achievement and influence necessary for second preference classification, it cannot serve as a one-time achievement that would, by itself, establish eligibility for first preference classification, which otherwise requires a career of acclaimed work in the field. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Accordingly, the petitioner has not met the requirements for a motion to reconsider by submitting legal authority demonstrating that the November 29, 2013 decision was based on an incorrect application of law or policy as required under 8 C.F.R. § 103.5(a)(3).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the motion will be dismissed.

**ORDER:** The motions are dismissed, the AAO's November 29, 2013 decision is affirmed, and the petition remains denied.