(b)(6)

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: MAY 0 5 2015 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: 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 employment-based immigrant visa petition on January 18, 2013. On June 21, 2013, the Administrative Appeals Office (AAO) upheld the director's decision, and dismissed the appeal. On November 29, 2013, we granted the subsequent motion to reopen and reconsider, but affirmed the decision after a full review on the merits. The petitioner filed a second motion, which we dismissed on June 25, 2014, also addressing the merits. The petitioner subsequently submitted a third motion, which we dismissed on October 15, 2014. The petitioner filed a fourth motion on November 17, 2014, which we dismissed on February 18, 2015. The matter is now before us on a fifth motion.[1] The current motion is a motion to reopen and a motion to reconsider. We will grant the motion to reopen and reaffirm our prior determinations regarding the petitioner's eligibility, and dismiss the motion to reconsider.

According to part 6 of the Form I-140, the petitioner seeks classification as an "alien of extraordinary ability" as a lawyer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In our initial June 21, 2013 decision, we agreed with the director that the petitioner had not submitted evidence that satisfied at least three of the regulatory criteria. We also raised a concern regarding whether the petitioner intended to work in one of the statutorily defined fields, sciences, arts, education, business or athletics. In our November 29, 2013 decision, we addressed both issues on the merits and concluded that the petitioner had not resolved the issue of his intended employment and had not established that he has a one-time achievement or meets at least three of the regulatory criteria. In our June 25, 2014 decision, we once again addressed the merits of the petitioner's eligibility, concluding that he had not demonstrated that he has a one-time achievement or that he meets at least three of the regulatory criteria. In our October 15, 2014 decision, we concluded that, even considering the new evidence relating to some of the criteria, the petitioner had not demonstrated that he meets at least three of the regulatory criteria. In our February 18, 2015 decision, we concluded that the new evidence addressed only the issue of the petitioner's intended area of employment, and that he had thus abandoned the issue of whether he satisfies at least three of the regulatory criteria.

[1] The record contains a pending Form I-140 petition, receipt number [redacted] which the petitioner filed on January 22, 2013. As the record has remained with the AAO to adjudicate the motions on the petitioner's previous petition, the director has not had an opportunity to review the newer petition.

I. MOTION TO RECONSIDER

Within the present motion, the petitioner correctly notes that we determined he satisfied the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) within our June 21, 2013, decision. He also identifies a typographical error within our February 18, 2015, decision in which we stated within the "order" section that the "decision of the AAO dated July 2, 2012, is affirmed, and the petition remains denied." In fact, we should have stated that our decision dated October 15, 2014, was affirmed. However, the date of our most recent decision as stated in the order section was not material to the beneficiary's eligibility. Notably, the text of the decision itself included the correct dates for every prior decision by the director and us. It is not enough to demonstrate errors in an agency's decision. The petitioner must also establish that the errors prejudiced him. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119, 1122 (9th Cir. 2010). The petitioner has not demonstrated he was prejudiced by our inclusion of an erroneous date in the order section, especially as all of the dates in the text of the decision were correct. Nevertheless, as we are reopening the matter for the reasons discussed below, we amend the order of our previous decision to include the correct date, October 15, 2014.

The petitioner further asserts that we incorrectly applied the law and agency policy in our February 18, 2015 decision because we did not reopen the matter due to the fact that he did not address the elements within the October 15, 2014 decision. The petitioner states that we had no basis to limit the initial discussion within the decision on his fourth motion as we did not cite to any statute, regulation or precedent decision to support this determination. The regulation at 8 C.F.R § 103.5(a)(1)(i) requires the petitioner to file a motion to reopen "within 30 days of the decision that the motion seeks to reopen," suggesting that while 8 C.F.R § 103.5(a)(2) discusses the "reopened proceeding," there is some focus on the most recent decision. Regardless, a motion to reopen must also "state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R § 103.5(a)(2). Nothing in this provision suggests that we are obligated to reopen a decision and render a new decision that considers the entire record anew where the new facts on motion address only one of the bases of ineligibility and we have previously addressed the merits in earlier decisions. The petitioner's citations to 5 U.S.C. § 706(2)(A) and *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, 1308 (9th Cir. 1984) relate to the standard of review of agency decisions in federal court. While these authorities confirm that the standard is abuse of discretion, they do not address whether it is an abuse of discretion to not reevaluate the record anew on issues that we addressed in previous decisions and for which the petitioner provided no new facts.

In addition, the petitioner cites to the regulation at 8 C.F.R. § 103.5(a)(2), as well as to the AAO Practice Manual relating to motion filing requirements. Regarding his November 17, 2014 motion, the petitioner now asserts that as he addressed a single issue out of a total of six issues raised in our October 15, 2014 decision, we should have granted the motion and entered a separate conclusion based on another review on the merits of his original petition.

As stated in our February 18, 2014 decision, 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, 108 (1988)); *see also Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). "There is a strong public interest in bringing litigation to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases." *INS v. Abudu*, 485 at 107. Based on its discretion, "[T]he [USCIS] has some latitude in deciding when to reopen a case. [USCIS] should have the right to be restrictive. Granting such motions too freely will permit endless delay of deportation by aliens creative and fertile enough to continuously produce new and material facts sufficient to establish a prima facie case." *Id.* at 108. The result also needlessly wastes the time and efforts of the triers of fact who must attend to the filing requests. Accordingly, the petitioner has not provided a legal authority demonstrating that our February 18, 2015 decision made an error of law by not reopening to consider the entire record anew based on new evidence that addressed only one of several issues we had raised previously.

Finally, the petitioner questions the precedential value of *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011) for the proposition that a petitioner abandons claims not raised before an appellate authority. The petitioner indicates that the respective courts do not exercise jurisdiction over his case, and we were, therefore, incorrect in citing to these decisions. The petitioner also identifies a portion of the U.S. Citizenship and Immigration Services' Adjudicator's Field Manual to support his position. Although, the petitioner is correct in stating that the cited courts do not directly hold jurisdiction over his residence, the procedural fact patterns between his case and the cited cases are sufficiently similar that we find the reasoning in those decisions persuasive.[2] Accordingly, the petitioner has not provided a legal authority to demonstrate that we erred in citing these cases as persuasive authority.

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 Service policy." 8 C.F.R § 103.5(a)(3). For the reasons discussed above, the legal authorities the petitioner cites in his current motion do not establish that our February 18, 2015, decision was based on an incorrect application of law or policy. Accordingly, we will dismiss the motion to reconsider.

II. MOTION TO REOPEN

We will grant the petitioner's motion to reopen for purposes of amending the date in the order of our previous decision and to consider the new evidence the petitioner submitted with his current motion. The order of our February 18, 2015, decision is hereby amended to reaffirm our prior decision of

[2] We cited those decisions with a "*Cf.*" signal, indicating that they support a sufficiently analogous proposition. *The Bluebook: A Uniform System of Citation* 55 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010.)

October 15, 2014. The new evidence with the current motion confirms that the petitioner is currently an additional representative to the which is in consultative status with the We have previously acknowledged that the petitioner has performed a role for this association. The new evidence does not address our previous concerns that the petitioner has not submitted evidence regarding the significance of his role with the association. As we have addressed all of the evidence of record relating to the regulatory criteria in previous decisions, and we find persuasive the authority cited above that the petitioner's decision not to address the regulatory criteria in his November 17, 2014 motion effectively abandoned the issue of whether he has satisfied at least three of the initial evidentiary requirements at 8 C.F.R § 204.5(h)(3), we will not address those criteria further in this decision.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The motion to reconsider is dismissed. The motion to reopen is granted. The decision of the AAO dated February 18, 2015, is affirmed as amended by this decision, and the petition remains denied.