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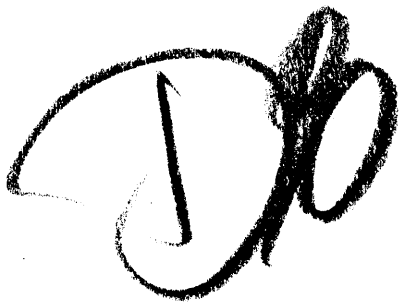

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 03 107 53188 Office: TEXAS SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a horse breeder and trainer company that seeks to employ the beneficiary as a horse trainer for a period of three years. The director denied the petition, finding that the petitioner failed to establish that the beneficiary satisfied the regulatory standard for an alien with extraordinary ability in the field of horse training.

The AAO summarily dismissed the initial appeal because the petitioner indicated that it would submit additional evidence within sixty days of filing the appeal, but failed to submit such evidence. On appeal, counsel for the petitioner simply stated as the reason for the appeal that the director erred in her request for evidence and misled the petitioner. The AAO determined that the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact; hence, summarily dismissed the appeal.

On motion, counsel for the petitioner submits a brief and additional evidence.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "[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."

Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.[1]

On motion, counsel for the petitioner has submitted several letters from experts in the beneficiary's field of endeavor, a wage survey, a consulting agreement, a list of the beneficiary's awards, photographs of several awards and of the beneficiary holding trophies.

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). The evidence submitted in support of the motion was previously available and could have been discovered or presented in the previous proceeding.

On review, the evidence submitted on motion will not be considered "new" and will not be considered a proper basis for 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." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion to reopen will be dismissed.

Furthermore, 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

> 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. 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.

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[1] The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <*new* evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

The petitioner does not submit any document that would meet the requirements of a motion to reconsider. The reasons provided for reconsideration, i.e., the director's decision denying the petition is arbitrary and capricious, is not an adequate reason for reconsideration. The petitioner failed to cite any precedent decisions in support of a motion to reconsider. The petitioner does not argue that the previous decisions were based on an incorrect application of law or Citizenship and Immigration Services (CIS) policy. The petitioner's motion will be dismissed.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a 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. 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." 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.