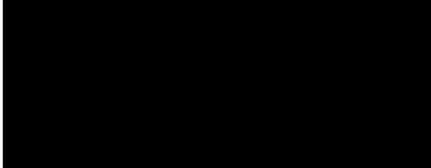




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U.S. Department of Justice
Immigration and Naturalization Service

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 98 223 53010 Office: California Service Center

Date: **OCT 29 2002**

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petitioner filed an appeal, which the director deemed to be untimely. The director considered the appeal as a motion to reopen. After granting the motion to reopen, the director affirmed the denial of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as an alien of exceptional ability in the arts. The petitioner seeks employment as an artist/illustrator. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner did not qualify for classification as an alien of exceptional ability, and that she had not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The director also found that the petitioner had not properly applied for the national interest waiver in accordance with the Service regulation at 8 C.F.R. 204.5(k)(4)(ii).

The Service regulation at 8 C.F.R. 204.5(k)(4)(ii) states, in pertinent part:

The director may exempt the requirement of a job offer, and thus of a labor certification... if such exemption would be in the national interest. To apply for the exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate.

The petition, filed on August 14, 1998, did not include Form ETA-750B. On September 9, 1999, in accordance with the Service regulation at 8 C.F.R. 103.2(b)(8), the director issued a request for evidence, stating:

For the alien to qualify for an exemption from the requirement of a job offer, and thus of a labor certification, you must submit Form ETA-750B, "Statement of Qualifications of Alien," in duplicate...

The director also requested the petitioner to submit evidence that she met the guidelines published in Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998) and the regulatory criteria for exceptional ability set forth at 8 C.F.R. 204.5(k)(3)(ii).

On November 29, 1999, the petitioner responded in part to the director's request, but failed to provide Form ETA-750B. The record did not contain this document, and therefore, by regulation, the petitioner could not be considered for a waiver of the job offer requirement.

On March 2, 2000, the director denied the petition. The director stated the petitioner had failed to establish that she met the regulatory criteria for exceptional ability set forth at 8 C.F.R. 204.5(k)(3)(ii), or that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. Additionally, the director stated: "[T]he petitioner did not submit the requested Form ETA-750B."

On April 7, 2000, the petitioner filed an untimely appeal of the director's decision. In accordance with 8 C.F.R. 103.3(a)(2)(v)(B)(2), the director treated the appeal as a motion to reopen. In support of the motion, the petitioner provided evidence of her participation in three art shows in 2000. This evidence came into existence subsequent to the petition's filing. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The director found that the documentation accompanying the motion did not establish the petitioner's eligibility for a national interest waiver or that she met the regulatory criteria for exceptional ability. The director again noted the absence of the Form ETA-750B.

On appeal, the petitioner provides a brief listing of her activities from April 2000 to October 2000. She alleges that five magazines have recently published or expect to publish her artwork, but provides no evidence to support her claim. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, these events all came into existence subsequent to the filing of the petition, and cannot be considered to support the petitioner's claim of exceptional ability. See Matter of Katigbak, *supra*.

A review of the record shows that the petitioner failed to submit the Form ETA-750B at the time of filing. The director then specifically informed the petitioner, in writing, that the Form ETA-750B must be provided. The petitioner failed to comply with the director's request and her petition was then properly denied. Based on the preceding discussion, we find that the director acted in accordance with Service regulations in denying the petition. Despite having received three written notifications from the director indicating that the Form ETA-750 was missing from the record, the petitioner has still failed to provide this document on appeal. Furthermore, the petitioner has not shown that she qualifies for classification as an alien of exceptional ability, or that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner offers no specific arguments addressing the director's findings and provides no further evidence regarding her eligibility. As stated in 8 C.F.R. 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The petitioner has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.