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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass Ave, 3/F

Washington, D.C. 20536

Identifying data deleted to prevent clearly unwarranted invasion of privacy

File: [Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 03 2003

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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 and/or a member of the professions with education and experience equivalent to an advanced degree. As indicated on his Immigrant Petition for Alien Worker, Form I-140, the petitioner seeks employment as a journalist/writer/publicist. The petitioner asserts that an exemption from the requirement of a job offer, and thus a labor certification, is in the national interest of the United States. On May 18, 2000, the director revoked the approval of the petition based upon the determination that the alien did not qualify as a member of the professions holding an advanced degree or as an alien of exceptional ability and because the petitioner had failed to demonstrate that his efforts would serve the national interest. On September 23, 2002, the AAO affirmed the director's decision and dismissed the appeal.

On October 7, 2002, the petitioner submitted a motion to reconsider to the AAO with a request for 90 additional days to "secure the necessary documents to back [his] motion, from authorities in the USA, and 120 days for information from sources in Nigeria." On March 10, 2002, more than five months after filing the motion, the petitioner has submitted new documentation, namely an attestation from [REDACTED] Minister Counsellor from the Embassy of Nigeria in Washington, D.C., and a letter from the Northern California Media Guild. We note that the credential evaluation reports submitted on motion are not new documents and were previously submitted into the record by the petitioner.

There is no regulation that allows the petitioner an open-ended or indefinite period in which to supplement a previously filed motion. 8 C.F.R. §103.3(a)(2)(vii) requires a petitioner to request, in writing and in advance, additional time to submit a brief. This existence of this regulation demonstrates that the late submission of supplements to an appeal is a privilege rather than a right. Even these limited circumstances for late supplements expressly apply to appeals rather than to motions. There is no regulatory provision at all to allow a petitioner to supplement a motion at any time, let alone months after the filing of that motion. The act of filing a motion to reopen does not grant the petitioner an indefinite or open-ended period in which to supplement the record at will. For the foregoing reasons, any consideration at all that is given to the petitioner's untimely submission is entirely discretionary.

The petitioner also requests "an appointment" with the AAO because he has reason "to feel disturbed and concerned at the way that [his] case has been treated. If by "an appointment" the petitioner means, oral argument, we note that oral argument is limited to cases where cause is shown. The petitioner must show that a case involves facts or issues of law which cannot be adequately addressed in writing. The petitioner points out "flaws" made by the Bureau, such as "the lack of proper investigation" as a reason for the request for an appointment. The petitioner does not, however, summarize any particular facts or legal

issues, or explain why oral argument is necessary to address them. Therefore, the request for oral argument is denied.

The first issue to be addressed is the petitioner's eligibility for the underlying visa classification. As all of the pertinent sections of the Act and regulation were cited in our previous decision, we will not restate them here. In our original decision we upheld the director's determination that the petitioner failed to establish that he is a member of the professions or that he holds the equivalent of an advanced degree. We specifically noted that the petitioner had failed to submit evidence that he received payment for any of his published articles or in any way earned his living as a journalist or related occupation. We also noted that, although information from the Department of Labor suggests that a job in journalism qualifies as a profession as it requires a minimum of a bachelor's degree, the petitioner has not established he was a member of the professions as he lacked the requisite degree.

The letter from Mr. [REDACTED] submitted by the petitioner on appeal, states that the National Diploma in Mass Communications is a valid and standard qualification for the practice of journalism in Nigeria. The qualifications for Nigerian journalists are not in question in this case. The issue is whether or not the petitioner earned his living as a journalist and whether the petitioner has a baccalaureate degree. Neither fact has been established by Mr. [REDACTED] letter.

Mr. [REDACTED] goes on to state that the "New Nigeria", "The Democrat", and "Niger State Radio Corporation" are recognized media establishments in Nigeria, and that the petitioner "has provided evidences [sic] of having done professional assignments for these organizations." While Mr. [REDACTED] may believe the truth of his assertion, as stated in our earlier decision, we are not satisfied that the petitioner has done any professional work for any of these organizations. In the director's revocation he noted that the articles submitted by the petitioner as evidence "are commentary on various subjects, primarily the arts" and that "there is no evidence that these writings represent a full-time occupation or that [the petitioner] was paid for them." The assertion made by Mr. [REDACTED] that the petitioner was *employed* as a journalist in Nigeria is not substantiated by any evidence in the record.

We note that although the petitioner requested an extension to gather more information from Nigeria, no documentation to establish employment, such as paychecks or job offer letters have been submitted to substantiate his claims.

On motion, the petitioner argues that although he does not possess a bachelor's degree, his combined experience and education are comparable to such a degree. This was the same argument that we refuted in our decision on the petitioner's appeal. As stated in our previous decision:

An alien who holds no advanced degree can establish equivalency through a bachelor's degree and post-baccalaureate experience, but there is no comparable provision for an alien with no bachelor's degree...A combination of foreign degrees, none of which is equivalent to a U.S.

baccalaureate, cannot in the aggregate form a single foreign equivalent degree.

The relevant regulations require an official academic record of a bachelor's degree. The credential evaluation reports submitted by the petitioner do not state that the petitioner has a baccalaureate degree, only education and training equivalent to a bachelor's. However, while experience can substitute for a master's degree, there is no comparable provision with regard to the underlying bachelor's degree. If the beneficiary does not have a bachelor's degree (or equivalent degree from a foreign institution), the beneficiary cannot qualify as a member of the professions holding an advanced degree, regardless of how many years of experience or education he has accumulated.

As we determined that the petitioner was neither a member of the professions nor an alien holding an advanced degree, the remaining issue was whether the petitioner qualified as an alien of exceptional ability. Although the petitioner claimed to have satisfied three of the six criteria, we found he had not satisfactorily established any one of the criteria.

On motion, the petitioner argues that the Bureau should have allowed him to submit comparable evidence of his exceptional ability as the criteria in 8 C.F.R. §204.5(k)(3)(iii) do not readily apply to his occupation. We do not find this argument to be persuasive. At no time prior to his motion did the petitioner ever raise the issue that his occupation did not readily fit into the regulatory criteria. Furthermore, we do not find that the regulatory criteria are inapplicable to the petitioner's stated occupation of journalism. The evidence submitted by the petitioner clearly fits within the standards of the regulation, namely: an official academic record showing that the alien has a degree, diploma, certificate, or similar award for a college, university, school, or other institution of learning relating to the area of exceptional ability; a license to practice the profession or certification for a particular profession or occupation; and evidence of membership in professional organizations. To date, the petitioner has not submitted any additional evidence to establish that the standards in 204.5(k)(3) do not readily apply to his occupation.

On motion, the petitioner submits a letter from the Northern California Media Guild to confirm that he is a member of the guild as a freelance journalist. The letter is dated January 24, 2003. The petitioner does not submit any evidence to show that he was a member of the guild at the time of filing. Membership status granted after the time of filing cannot retroactively establish eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Bureau held that beneficiaries seeking employment-based immigrant classifications must possess necessary qualifications as of the filing date of the visa petition. Further, there is no evidence that membership represents a level of expertise significantly above that ordinarily encountered in the field. The criteria listed at 8 C.F.R. § 204.5(k)(3) must in some way be indicative of exceptional ability, and if membership in the Northern California Media Guild is merely contingent on employment in the field or payment of dues, then such membership would not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

On appeal, the petitioner argues that national interest waivers, such as his, that were approved prior to the publication of *Matter of New York State Dept. of Transportation*, 22

I&N Dec. 215 (Comm. 1998), should not be revoked based upon that precedent decision. We acknowledged the petitioner's argument on appeal, but determined that as the primary focus of the director's revocation was not on the national interest determination, the director's reliance on *Matter of New York State Dept. of Transportation* did not change the outcome of the director's decision. On motion, the petitioner now claims that *Matter of New York State Dept. of Transportation* was ignored and that and in doing so, "the INS seems to be refusing to appropriately apply the law with regard to the relevance of the NYSDOT to [his] petition." This argument is in direct contrast to the argument made by the petitioner on appeal.

Focusing on the final paragraph of the director's decision, the petitioner also argues that the decision on national interest formed more than a minor portion of the director's decision. We, however, do not accept this characterization of the revocation decision. The director's decision discusses, at length, the reasons for revocation. These reasons include the petitioner's failure to demonstrate that he is a member of the professions, or that he has an advanced degree, or that he is an alien of exceptional ability. The director's discussion of the petitioner's eligibility for a national interest waiver was limited to one paragraph in the entire three-page decision. Therefore, we uphold our original finding that the director's determination regarding national interest formed only a small part of the basis for the final revocation and that the director was within his authority to "revoke approval of a petition that should not have been approved in the first place."

The petitioner's final argument alleges that the director's decision is prejudiced because of the reference to the petitioner's fraud and misrepresentation. The petitioner argues our decision effectively disproved any fraud or misrepresentation on his part, and as such, the prior decision by the director was, therefore, "blemished" and "tainted" and should be "rescinded." While we understand the petitioner's justified indignation at being accused of fraud and misrepresentation, our job as an appellate body is to conduct an independent, unbiased review of the entire record. We found, and specifically stated that there was no fraud or misrepresentation on the part of the petitioner. We also found, however, that independent of the reference to fraud and misrepresentation, the grounds for revocation as stated by the director were correctly and adequately addressed. We do not find that the director's or our previous decision was prejudiced by the allusion to fraud or misrepresentation.

For the above reasons, the petitioner's arguments and evidence submitted on motion do not establish that the petition was approvable at the time of filing, or that the director or the AAO erred in denying the petition.

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 previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of September 23, 2002, is affirmed. The petition is denied.