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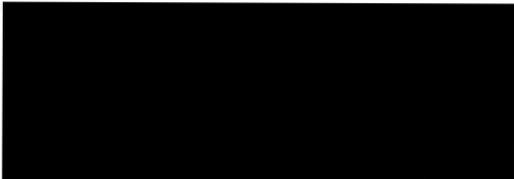
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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FILE:

LIN 07 068 50662

Office: NEBRASKA SERVICE CENTER

Date: AUG 06 2009

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)

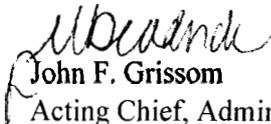
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The Form I-140, Immigrant Petition for Alien Worker, was filed on January 3, 2007. In Part 1 of the Form I-140 petition, the petitioner listed an address of "[REDACTED]"¹ On April 29, 2008, the director issued a request for evidence pertaining to the regulatory requirements at 8 C.F.R. § 204.5(h)(3). The record reflects that the request for evidence notice was mailed to the address listed by the petitioner in Part 1 of the Form I-140 petition.² The petitioner failed to respond to the director's request for evidence. On July 11, 2008, the director denied the petition finding that the evidence of record did not establish the petitioner's sustained national or international acclaim or that he is recognized as one of that small percentage who have risen to the very top of his field. More specifically, the director found that the petitioner had failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). We further note that page 2 of the director's decision listed the specific requirements for supporting documents as set forth in the regulation at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner states:

Your decision to deny the petition filed by me for classification as an alien of extraordinary ability is based primarily on the statement that on 4/29/08, your office forward [sic] a "RFE," and that I failed to respond to the request. In submission of my petition, I listed as my mailing address care of [REDACTED]. It is acknowledged that your letter of 4/29/08 was received by his office, and on 5/5/08, he forwarded a copy of the RFE to my address [REDACTED] by certified mail, return receipt requested. . . . Attached is evidence that [REDACTED]'s letter was never delivered to my home address by the U.S. Postal Service, but rather the attachment shows that the letter was "unclaimed." Furthermore, it is evident from this communication that the letter of 5/5/08, was never returned to [REDACTED]. I cannot explain the failure to receive this letter, which obviously I would have responded to as soon as possible due to the importance of the matter. I can state that I am not aware of any notification left by the USPS reference to the letter of 5/5/08. Based on the above facts, and in the sense of fair play, it is kindly requested that this matter be re-opened, and a subsequent RFE be sent by your office with any instructions as to the information to be provided in support of the petition.

Notices and decisions, when served by mail, must be sent to a person at his or her last known address. 8 C.F.R. § 103.5a(a)(1). In this instance, the petitioner acknowledges that the director's

¹ Part 1 of the petitioner's Form I-290B, Notice of Appeal or Motion, submitted on August 6, 2008 lists the same address.

² On appeal, the petitioner confirms that the notice was received at the address of record.

request for evidence was received at the correct address as identified by the petitioner in Part 1 of the Form I-140 petition. Accordingly, the director fully complied with the regulation at 8 C.F.R. § 103.5a(a)(1). The problems arising from the exchange of documents between [REDACTED] and the petitioner are irrelevant to this matter as they do not relate to any errors on the part of the director. Furthermore, contrary to the petitioner's first statement, the director's notice of denial was not based primarily on the petitioner's failure to respond to the request for evidence. Rather, the director's decision was based on the evidence of record and the merits of the petitioner's extraordinary ability claim. For example, the director's decision discussed the initial evidence submitted by the petitioner, such as the petitioner's RSA Student Design Award, and cited the deficiencies in that evidence as they relate to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

At this point, the director's decision already having been rendered, the most expedient remedy for the petitioner's request that the matter be reopened is the full consideration on appeal of any evidence which the petitioner would have submitted in rebuttal to the director's observations and findings. The petitioner's appellate submission, however, was unaccompanied by arguments or evidence addressing the regulatory criteria at 8 C.F.R. § 204.5(h)(3) which the petitioner claims to meet. Further, the petitioner does not specifically challenge any of the director's findings or his analyses of the evidence submitted for the regulatory criteria.

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 pertaining to the classification sought. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.