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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
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: OCT 13 2009
SRC 09 013 51109

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:



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).

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petition is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had submitted his petition with no supporting evidence and therefore had failed to demonstrate 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).

On appeal, counsel for the petitioner states that the petition was accompanied by extensive documentation consisting of 161 exhibits including the memorandum in support of the petition. Counsel further argues that the petitioner meets the statutory requirements and at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In support of the appeal, counsel provides a copy of the United States Postal Service (USPS) Express Mail receipt indicating that he mailed a package weighing four pounds and six ounces to the U.S. Citizenship and Immigration (USCIS) Texas Service Center on October 16, 2008. According to the USPS website, the package was delivered to the service center on October 20, 2008 and was signed for by [REDACTED]. The evidence sufficiently establishes that the petitioner submitted more than a supporting letter in support of his petition.

The record reflects that the service center was in receipt of counsel's memorandum in support of the petition when the petition was adjudicated. That memorandum indicated that the petition was accompanied by 161 exhibits, which were referred to throughout the memorandum. The director made no attempt to clarify the petitioner's submission.

The regulation at 8 C.F.R. § 103.2(b)(8) provides:

Request for evidence. If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence . . . Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence . . . In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence.

The record does not reflect that that the petitioner was clearly ineligible for this immigrant visa petition and does not reflect that the petitioner was served with a request for evidence in accordance with 8 C.F.R. § 103.2(b)(8).

Therefore, this matter will be remanded for consideration of the petitioner's evidence as initially submitted and issuance of a request for evidence in accordance with the regulation if necessary. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.