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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **OCT 26 2009**  
SRC 08 271 50063

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:

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).

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner seeks to employ the beneficiary permanently in the United States as an air conditioning and heating installer. On Part 2 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner checked box "a," indicating that it seeks to classify the beneficiary 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. The director determined that the petitioner had not submitted evidence pertaining to the beneficiary's eligibility for the classification sought.

On appeal, the petitioner states:

[The beneficiary] has been working with my company since 2002. . . . Labor Department approved his case on April 29, 2006. . . . The Petition for Alien Worker I-140 was filed on Sept. of 2006, but unfortunately the USCIS [U.S. Citizenship and Immigration Services] Vermont lost his file . . . . On 09/02/08 per USCIS advice we filed again petition I-140 with payment of \$475 which actually was denied. Also on the decision notice at beneficiary was listed: [REDACTED] which is a mistake. Beneficiary is: [REDACTED] (employee) and [REDACTED] is [owner] of [REDACTED]. [The beneficiary] is very hard & reliable worker & we would like to have him working for our company. Thank you for your help on this matter.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

USCIS and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section,

the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3):

Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

(i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;

(iv) Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought;

(v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

(vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The Form I-140, Immigrant Petition for Alien Worker, was filed on September 11, 2008. With the petition, the petitioner submitted an August 29, 2006 Final Determination letter from the U.S. Department of Labor, a copy of a previously submitted Form I-140, copies of the beneficiary's federal and state income tax returns for 2007, copies of the beneficiary and his family's Arrival and Departure Records, Forms I-94, and an Application for Alien Employment Certification, Form ETA-750, certified by the U.S. Department of Labor. The petitioner submitted no evidence that the beneficiary had met any of the regulatory criteria listed in 8 C.F.R. § 204.5(h)(3).

In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). Further, the submitted documentation does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

While the documentation submitted in this case may be consistent with a different immigrant visa classification, the burden is on the petitioner to select the appropriate classification rather than to rely on the director to infer or second-guess the petitioner's intended classification. As previously discussed, the petitioner checked box "a" under Part 2 of the Form I-140 petition requesting to classify the beneficiary as an alien of extraordinary ability. The petitioner also signed the Form I-140 under penalty of perjury, certifying that "this petition and the evidence submitted with it are all true and correct." As the petition was unaccompanied by instructions from the petitioner specifying otherwise, the director properly adjudicated the petition pursuant to section 203(b)(1)(A) of the Act. There is no statute, regulation, or standing precedent that permits a petitioner to change the classification of a petition once a decision has been rendered by the director. Further, the Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, 286 Fed. Appx. 963 (9<sup>th</sup> Cir. July 10, 2008).

Moreover, USCIS is statutorily prohibited from providing a petitioner with multiple adjudications for a single petition with a single fee. The initial filing fee for the Form I-140 covered the cost of the director's adjudication of the I-140 petition under section 203(b)(1)(A) of the Act. Pursuant to section 286(m) of the Act, 8 U.S.C. § 1356, USCIS is required to recover the full cost of adjudication. In addition to the statutory requirement, Office of Management and Budget (OMB) Circular A-25 requires that USCIS recover all direct and indirect costs of providing a good, resource, or service.<sup>1</sup> If the petitioner seeks classification of the beneficiary under a different immigrant visa

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<sup>1</sup> See <http://www.whitehouse.gov/omb/circulars/a025/a025.html>.

classification, then the petitioner must file a separate Form I-140 petition, with the accompanying fee, requesting the new classification.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.