



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 02 2009
SRC 08 170 53608

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)

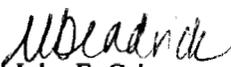
ON BEHALF OF PETITIONER:



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).


John F. Grissom
Acting 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 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 athletics. The director determined that 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 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 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, counsel states:

1. The Service denied without providing any opportunity to establish claim of the petitioner.
2. Consideration of the documents would differ the outcome of the matter.
3. The Center Director Erred by misapplying discretionary authority to classify the applicant on EB1 category.
4. The applicant qualifies to be classified as an immigrant worker with extra-ordinary ability by virtue of his fulfillment of more than three of the required criteria listed in 8 C.F.R. § 204.5(h)(3).

With regard to item 1, counsel contends on appeal that the director erred by failing to provide the petitioner with the opportunity to submit further evidence before denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides:

If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The director is not required to issue a request for further evidence in every potentially deniable case. If the director determines that the record lacks initial evidence or does not demonstrate eligibility, the cited regulation does not require solicitation of further documentation. Nevertheless, as the director's decision has already been rendered, the most expedient remedy for counsel's complaint 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, does not include any supplemental evidence despite counsel's claim on the Form I-290B that a brief and/or evidence would be submitted to the AAO.

In regard to item 2, counsel does not specify the documents that the director did not consider or refer to additional documents that would have changed "the outcome of the matter." Regarding item 3,

counsel does not identify specific examples of the director's misapplication of discretionary authority. With regard to item 4, the appellate submission 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, counsel does not specifically challenge any of the director's findings or his analyses of the evidence submitted for the regulatory criteria.

As previously noted, counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. The appeal was filed on November 28, 2008. As of this date, more than nine months later, the AAO has received nothing further.

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 director's stated reasons 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.