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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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DMYTRO ILYUK
297 AVENUE X
BROOKLYN, NY 11235

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **AUG 02 2010**
SRC 08 800 03889

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on June 4, 2009, 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 as a musician. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

On appeal, counsel stated;

Immigrant Petition I-140 was filed on behalf of [the petitioner], as an alien of extraordinary ability in the area of music. He is extraordinary musician, composer and sound director. Evidence presented did establish that petitioner sustained international acclaim and requirements of section 203(b)(1)(A) were met. Petitioner has submitted evidence to establish that he meets at least 3 out of 10 criteria of section 204.5(h)(3). Evidence attached to this appeal confirm that petitioner is truly an extraordinary musician, one of a very few who has risen to the top of the field of endeavor. He is known throught [sic] the world as a top sound/music directors, performers and truly unique talent. Please review this case in its entirety and approve the I-140 petition.

As stated in the regulation at 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. Counsel here has not specifically addressed the reasons stated for denial and has not identified any erroneous conclusion of law or statement of fact. Moreover, we note that the majority of the evidence submitted by counsel on appeal refers to events occurring after the filing of the petition on December 3, 2007. Eligibility must be established at the time of filing. Therefore, even if counsel provided a proper basis for filing the appeal, we would not consider this evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. In addition, regarding the other evidence submitted on appeal in the form of reference letters, counsel failed to specifically identify the criteria under the regulation at 8 C.F.R. § 204.5(h)(3) the petitioner claims to meet. It is not apparent from the review of the evidence to which criteria the evidence pertains. The burden is on the petitioner, and we will not infer or second-guess the intended criteria. As counsel failed to provide any specific statement or argument regarding the basis of her appeal, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.