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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

B2

AUG 04 2010

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

APPLICATION:

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:

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, 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. The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On August 10, 2008, the petitioner submitted a Form I-140, Immigrant Petition for Alien Worker, a statement and additional evidence. On April 24, 2009, the director issued a request for evidence (RFE). On June 5, 2009, the petitioner filed a response to the RFE. The director denied the petition on July 9, 2009 and the petitioner submitted a timely Form I-290B, Notice of Appeal or Motion on August 10, 2009. On appeal the petitioner argues that he meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3) for sustained national or international acclaim.

On the Form I-290B, the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition and indicates that a statement is attached. Although the petitioner submitted a brief, he failed to specifically address the director's conclusions. In his statement on appeal, the petitioner generally addresses evidence already contained in the record of proceeding. The statement is essentially the same statement originally filed with the Form I-140 and provides no argument regarding the director's specific findings. The petitioner also refers to the exhibits submitted with the Form I-140 but again fails to address the director's determination regarding the evidence.

Although the petitioner also provides additional evidence on appeal in the form of recent patent applications and manuscript reviews, such evidence cannot be considered because the events took place after the petitioner filed the Form I-140. A petitioner must establish eligibility for the benefit he is seeking at the time that the petition is filed. See 8 C.F.R. §§103.2(b)(1),(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship & Immigration Services (USCIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). In addition, although on appeal the petitioner claims that his work was cited "more than fifty (50) times" as opposed to the more than thirty times initially stated, the petitioner does not provide evidence of these

additional citations and references the exhibit submitted with the Form I-140.<sup>1</sup> Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.

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<sup>1</sup> The AAO notes that one of the citations described as “selected citations in the [sic] high profile international journals and well[-]noted conference proceedings” indicates that the petitioner’s work was used as part of the materials for a college course at the University of Maryland and not in a journal or conference as described in the statement.