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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

File:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

AUG 06 2010

IN RE: Petitioner:

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)

IN 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.

Thank you,

[REDACTED]

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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. The AAO concurred, concluding that the petitioner had not submitted evidence supporting the assertions in the record and the self-serving captions for the photographs of trophies. For example, the record lacked award certificates from the awarding authority, the bylaws or constitutions of the organizations of which she is a member, circulation and distribution data for the publication in which she was interviewed, official movie credits, box office receipts, employment contracts or pay stubs.

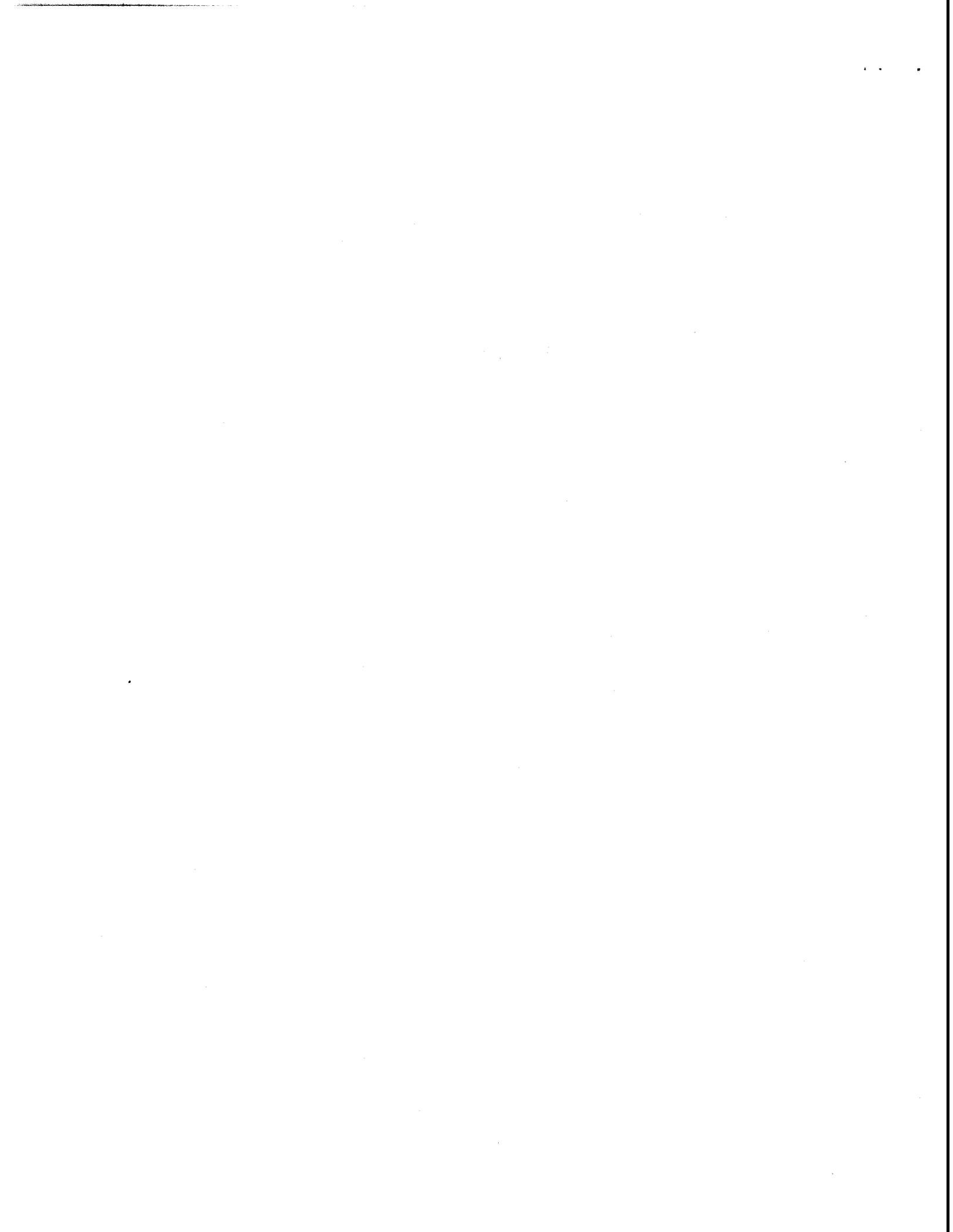
The AAO noted that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO further stated that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l. Comm’r. 1972)).

On motion, the petitioner provides new letters, none of which are from the award-issuing authorities, and photographs with self-serving captions. The petitioner did not submit certified translations of the foreign language writing on the awards as required by 8 C.F.R. § 103.2(b)(3).

The regulation at 8 C.F.R. § 103.5(a)(i) provides, in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). Service records reveal that the AAO’s notice was mailed to the petitioner at her address of record and to counsel at his address of record. The petitioner has not demonstrated that she or counsel advised the AAO of any change of address. The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E), relating to the filing requirements for motions, provides that a motion must be “[s]ubmitted to the office *maintaining the record* upon which the unfavorable decisions was made for forwarding to the official having jurisdiction.” (Emphasis added.)



The AAO dismissed the petitioner's appeal on October 26, 2009. The instructions on the cover page of the decision stated that "[a]ll documents *have been returned to the office that originally decided your case*. Any further inquiry must be made to that office." (Emphasis added.) On November 18, 2009, the petitioner submitted the motion to the AAO. The AAO returned the motion on November 20, 2009, advising that the motion should be submitted to the Texas Service Center. On November 30, 2009, the petitioner properly filed the motion with the Texas Service Center.

In light of the above, the motion is untimely. Moreover, given the language on the cover page of the initial decision by the AAO and in the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(E), the petitioner has not demonstrated that her failure to file a timely motion was beyond her control or due to U.S. Citizenship and Immigration Services (USCIS) error.

As the motion was untimely filed, the motion must be dismissed.

ORDER: The motion is dismissed.

