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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

[redacted]

B2,

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 1 6 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)

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 $630. 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 August 13, 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 in inmate behavioral modification. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

At the time of the original filing of the appeal, counsel claimed:

> The decision was incorrect based on the evidecne [sic] of record at the time of the initial decision. A brief will be filed to explain any erroneous conclusion of law or fact in the decision.

In counsel's brief, he claimed:

> From a review of the record in this matter, it appears that previous counsel timely submitted a response to the Request for Evidence. However, previous counsel failed to explain the additional documentary evidence submitted, instead choosing to include all the originally filed evidence with the I-140 along with the additional documentary evidence. An important aspect of this appeal is to provide a guide to understanding the additional documentary evidence submitted with the Request for Evidence and how if [sic] relates to the originally filed documentary evidence.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that "[a]n 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 this case, although counsel initially indicated that his brief would "explain any erroneous conclusion of law or fact in the decision," counsel based his appeal on the claim of prior counsel's failure "to explain the additional documentary evidence." In this instance, counsel has not identified as a proper basis for the appeal, an erroneous conclusion of law, or a statement of fact in the director's decision. Counsel does not contest the director's findings and identifies no challenge of the director's findings based on the record before him. The fact that prior counsel failed to adequately explain evidence does not demonstrate error on the part of the director. As such, the regulations mandate the summary dismissal of the appeal.

Moreover, in counsel's brief, he provided several explanations for some of the documentary evidence submitted in response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8). Two of several examples include:

> *Pim Thai* is a newspaper, which is sold nationwide on a daily basis in Thailand. Its circulation is quite extensive throughout Thailand. Pim Thai is a national news

> source and the Petitioner frequently writes columns as an [inmate behavioral modification specialist].
>
> *Mass Daily* is a bi-weekly journal with a circulation of 50,000 issues. It caters to Thailand's government employees, officials, the court system, and criminal system. The Petitioner's column centers on her work as an [inmate behavioral modification specialist].

However, counsel failed to submit any documentary evidence supporting his assertions. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Furthermore, we emphasize that the petitioner filed the employment-based immigrant petition as an alien of extraordinary ability in inmate behavioral modification. However, the petitioner submitted documentary evidence for some of the criteria under the regulation at 8 C.F.R. § 204.5(h)(3) relating to her occupation as a lawyer. In the director's decision, the director indicated:

> The Memorandum, from the Office of the General Counsel, dated January 20, 1995, states that, "[The Act] explicitly categories lawyers as professionals. Except for 'outstanding professors and researchers,' therefore, lawyers, as lawyers, do not qualify for EB-1 immigrant visas. The fact that an alien is a lawyer, or belongs to one of the other professions, would not necessarily foreclose the alien's EB-1 eligibility if the alien was also qualified as a person of 'extraordinary ability' in an EB-1 occupation."

Counsel failed to address this issue on appeal. Accordingly, we consider that issue to be deemed abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005). In fact, counsel again refers to the petitioner's documentary evidence relating to her occupation as a lawyer as demonstrating eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), and the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Specifically, counsel claimed:

> [T]he petitioner received [a certificate from the Lawyers Council of Thailand] because she was selected as the Administrative Director of the Board of Law Society in Region 1. [The petitioner] is serving two terms in a row starting in 2004 and ending in 2010. In order to be selected to this position, one must be an outstanding lawyer in Region 1, which includes ten provinces in central Thailand. In Region 1 there are approximately 10,000 lawyers. The petitioner's duties and responsibilities include administering the work under the policy of the Lawyers Council of Thailand, conducting seminars for individuals in the central part of Thailand, and working as a member of the professional responsibility committee that deals with legal practice.

> [T]o be elected to this position of Chairperson [of Pathum Thani Province], one needs to have worked as a lawyers for five years. The membership encompasses approximately 500 lawyers. Terms last for 3 years and two fellow members nominate candidates. The candidate with the most votes wins the election. The Petitioner's duties and responsibilities included overseeing 1 or 96 Thai court systems, conducting legal seminars, judging professional competence of lawyers, and providing public defenders.
>
> [A]s a member of [Lawyers Council of Thailand], the main focus is on professional responsibility and conduct of fellow lawyers. This is a most prestigious position to obtain in Thailand and has been held in the past by

It is clear from counsel's assertions that the documentary evidence is based on the petitioner's occupation as a lawyer and not the field of inmate behavioral modification. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. While the petitioner's achievements as a lawyer may provide her some experience in the inmate behavioral modification field, the petitioner must demonstrate her eligibility for the criteria under the regulation at 8 C.F.R. § 204.5(h)(3) in inmate behavioral modification.

In addition, we note that counsel claimed the petitioner's eligibility on appeal for criteria that do not meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3). For example, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." On appeal, counsel refers to the previously mentioned certificates of membership and claimed that "[o]btaining certificates and holding memberships on committees of this nature demonstrates a level on national recognition in this field." Notwithstanding that the certificates reflect membership in the field of law, the plain language requires lesser nationally or internationally *prizes* or *awards* for excellence. The petitioner's membership and chairwomanship in law organizations fail to equate to a prize or an award.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." On appeal, counsel claimed that "because a

famous human rights lawyers and former Prime Minister of Thailand previously held one or more of these positions" on the councils or committees, the petitioner demonstrated eligibility for this criterion. Again, counsel based the petitioner's eligibility on associations not related to inmate behavioral modification. Nevertheless, counsel failed to submit any documentary evidence reflecting that membership requires outstanding achievements of their members, as judged by recognized national or international experts, regardless of the claimed stature and reputation of previous members.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." However, counsel claims the petitioner's eligibility for this based on her self-authored articles in *Pim Thai* and *Mass Daily*. Articles authored by the petitioner are not published material about the petitioner relating to her work. Self-authored articles are more relevant to the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence 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." On appeal, counsel claims that "[the petitioner] worked on various committees and served on counsels [sic], which judge the professional responsibility of practicing lawyers in Thailand." Notwithstanding that counsel failed to submit any documenary evidence supporting his assertion, counsel claims the petitioner's eligibility based on judging "the professional responsibility of practicing lawyers" and not in the field of inmate behavioral modification. *See INS v. Phinpathya*, 464 U.S. 183, at 189 n.6; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." At the time of the original filing of the petition, the petitioner submitted four papers without any documentary evidence establishing that they were published in professional or major trade publications or other major media. While counsel offers his own assertions on appeal regarding *Pim Thai* and *Mass Daily*, he failed to provide any documentary evidence regarding his assertions. *See INS v. Phinpathya*, 464 U.S. 183, at 189 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503. Furthermore, scholarly articles are generally written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, the petitioner's articles do not contain the characteristics of scholarly articles and appear to be personal opinion articles, rather than for scholarly purposes. We note that in response to the director's request for additional evidence, the petitioner submitted five papers that were purportedly published after the filing of the petition. Eligibility must be established at the time of filing. Therefore, we will not consider these items as 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.

Regarding the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), counsel merely states "[p]lease see Exhibits submitted with the previous filings" and "see above analysis of new documentary evidence submitted with the Request for Evidence." Counsel failed to provide any specific statement or argument regarding the basis of the appeal. Moreover, counsel offers no explanation regarding how his analysis of the documents in response to the director's request for additional evidence demonstrates error on the part of the director based upon the record that was before him.

Finally, while not addressed by the director in his decision, we note that the regulation at 8 C.F.R. § 204.5(h)(5) states:

> Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

At the time of the original filing of the petition, the petitioner submitted a letter stating:

> I intend to continue my work in the United States in my field of expertise inmate behavioral modificiation specialist – by contacting universities state and federal criminal justice centers and other penal institutions that are interested in my services.

In response to the director's request for additional evidence, the petitioner submitted another letter stating:

> I plan to work on decreasing recidivism for the Florida Department of Corrections. According to the 2000 US. Census, Florida has the fourth largest Thai population in the United States.
>
> Alternatively, I will pursue my work in this field in California Department of Corrections and Rehabilitation. California has the largest Thai population in the United States according to the 2000 US Census.
>
> While my work plan is focused on the Thai inmate population in the United States, my skills and ability are easily transferrable to the non-Thai inmate population in the United States.

In addition, the petitioner submitted an uncertified English translation from a purported website, ThaitownUSA News Online, reflecting the Thai population statistics in the United States, including Florida and California.

We find these two letters insufficient to establish the petitioner's intent to continue in her area of expertise. While the petitioner claims that she will work for the Florida Department of Corrections (FDC) or the California Department of Corrections and Rehabilition (CDCR), she failed to submit any documentary evidence supporting her future employment at either of these places. She has offered no specific details regarding, for instance, how she would obtain employment, whether she has any contacts, or whether her experience qualifies her for any particular position. The mere general desire of the petitioner to work at FDC or CDCR based on Thai populations in those states is insufficient to demonstrate a detailed plan of her intention to continue to work in her area of expertise.

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. Therefore, for the reasons stated above, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.