

Identifying data deleted to prevent clearly unwarranted intrusion of personal privacy

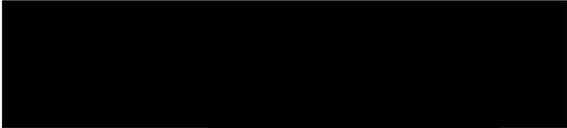
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

PUBLIC COPY

B2



FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: FEB 01 2010
SRC 09 053 52097

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)

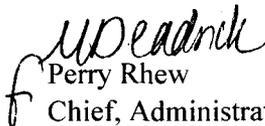
ON BEHALF OF PETITIONER:



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 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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on April 14, 2009, and is now before the Administrative Appeals Office 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 the arts. 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 the 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).

On appeal, counsel claims:

This matter is being appealed because the Service Center made erroneous finding(s) in this matter. The first point that must be noted and addressed is the scrutiny with which the documents and evidence presented were reviewed. It is submitted that not very well. My client seeks to be qualified as an extraordinary ability musician (clarinet) who not only performs, but also teaches and has published a dissertation in the field. Unfortunately, the officer who has reviewed the file does so stating "While the beneficiary appears a talented and skilled urban planner, she does not have the stature and renown to qualify for this classification." It is apparent that the officer did not conduct as extensive review of the file as he she purports to have when the denial is based on an unrelated field. Moreover, the officer did not even have the sex of my client correct.

A review of the director's decision reflects that he discussed and evaluated the evidence as it related to five of the regulatory criteria under 8 C.F.R. § 204.5(h)(3), for the petitioner's field as a musician - clarinet player. Specifically, the director adjudicated the petition under 8 C.F.R §§ 204.5(h)(3)(i) (lesser nationally or internationally recognized prizes or awards), (v) (original contributions of major significance), (vi) (authorship of scholarly articles), (vii) (artistic exhibitions and showcases), and (viii) (leading or critical role). While the director did indicate that the petitioner was an urban planner one time in the denial, the record clearly reflects that this was an innocent, minor mistake that did not negatively impact the director's ultimate decision. Such a mistake is not a reflection of the director's review of the record; rather, it reflects a single, harmless typographical error in the written decision. Further, counsel failed to address on appeal any erroneous conclusion of law or statement of fact relating to any specific criteria beyond these two typographical errors.

While counsel also argues that the petitioner "has a dissertation in his area of expertise which is downloaded and viewed various times a month," a review of the director's decision reflects that he discussed the petitioner's dissertation under the criterion at 8 C.F.R. §§ 204.5(h)(3)(v) and (vi). The director concluded that the act of downloading the petitioner's dissertation is not evidence of original artistic contributions of major significance to his field. Furthermore, the director found the petitioner failed to establish that his dissertation was even published. On appeal, counsel failed to address any of the specific findings of the director on this issue.

In addition, counsel further indicated that he would submit a brief and additional evidence to the AAO within 30 days. Counsel dated the appeal on May 13, 2009. As of this date, more than 7 months later, the AAO has received nothing further. Therefore, the record is considered to be complete as it now stands.

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. While counsel claims that there were "erroneous findings," as previously indicated, the single error in reference to the petitioner's gender and occupation did not affect the director's ultimate determination. A review of the director's decision indicates a thorough discussion of the petitioner and his proper field of endeavor. On appeal, counsel fails to elaborate or provide specific examples of any substantive error or the part of the director. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.