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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  
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FILE: [REDACTED]  
SRC 08 039 50581

Office: TEXAS SERVICE CENTER Date:

**JAN 22 2010**

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 July 24, 2008, 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 athletics. 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).

A review of the director's decision reflects that he found the petitioner eligible for two of the criteria under 8 C.F.R. § 204.5(h)(3). Specifically, the petitioner established eligibility under 8 C.F.R. § 204.5(h)(3)(i) (lesser nationally or internationally recognized prizes or awards) and 8 C.F.R. § 204.5(h)(3)(ii) (membership in associations in the field). On appeal, counsel claims that the director's decision is erroneous because the petitioner "has been ranked in the Top 10 Swimmers of the World for the past several years." Even though counsel claims that "[i]nitial evidence submitted with I-140 petition supports this claim," a review of the record does not contain any documentary evidence reflecting the petitioner's top 10 world ranking. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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). Regardless, counsel failed to demonstrate how the petitioner's alleged world ranking establishes eligibility for any of the other criteria listed under 8 C.F.R. § 204.5(h)(3), which were specifically addressed by the director. Moreover, counsel fails to address the director's remaining findings regarding the petitioner's failure to establish his plans to continue to work in the swimming field in the United States pursuant to section 203(b)(1)(A)(ii) of the Act, and the petitioner's failure to establish how he will substantially benefit prospectively the United States by training and swimming for a foreign national team in the 2008 Olympics pursuant to section 203(b)(1)(A)(iii) of the Act.

In support of the appeal, counsel also submitted a prior unpublished decision of the AAO. However, counsel does not indicate that the facts of the previous case are analogous to the instant case or provide any further information to support a finding that the AAO's previous decision (which was, in fact, not sustained but remanded for further review by the director) has any relevance to the current case. Regardless, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, *unpublished* decisions are not similarly binding. Each petition must be adjudicated on its own merits under the statutory and regulatory provisions that apply.

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. Besides the unsupported assertion by counsel and the submission of an unpublished AAO decision, counsel here has not specifically addressed the director's stated reasons for denial, has not demonstrated any error on

the part of the director and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

**ORDER:** The appeal is dismissed.