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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

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: JUN 23 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:

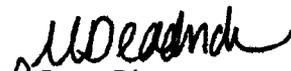
[REDACTED]

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 \$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, Texas Service Center, on May 4, 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. The director determined that the petitioner had not complied with the instructions for submitting supporting documentation in support of an electronically filed Form I-140.

The petitioner electronically filed Form I-140, Immigrant Petition for Alien Worker, on February 17, 2009. The instructions for electronically filing Form I-140 (which have been incorporated into the record of proceeding) state:

The required initial evidence must be received by the Service Center within seven business days of e-Filing the Form. If you do not submit the required initial evidence in the requisite time period, you will not establish a basis for eligibility, and we may deny your petition or application.

The record indicates that the petitioner did not file the required initial evidence in support of Form I-140. The director denied the petition on May 4, 2009, determining that because the petitioner failed to provide the required initial evidence within 7 days of electronically filing Form I-140, the petitioner failed to establish eligibility for the benefit sought in the present matter.

On Form I-290B, Notice of Appeal or Motion, filed on June 4, 2009, counsel for the petitioner does not dispute that the initial evidence was not filed. Instead, counsel requested an additional 30 days to submit a brief and/or additional evidence. Further, in a letter dated July 1, 2009, counsel requested an additional 60 days because "[the petitioner] is having a very difficult time collecting documents from Kenya in support of the I-140 petition." As of this date, approximately 12 months later, the AAO has received nothing further. Accordingly, the record is considered complete as it now stands.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, 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 this instance, the petitioner has not identified as a basis for the appeal, nor has the AAO found, an erroneous conclusion of law or a statement of fact in the director's decision. The AAO notes that it is within the director's discretion, as provided in the instructions for filing Form I-140, to deny the petition on the basis of the failure to submit required initial evidence.¹ Counsel does

¹ As the director correctly noted, the instructions on the applications and petitions are incorporated into the regulations providing for the filing of the requisite forms and supporting evidence, pursuant to 8 C.F.R. §§103.2(a)(1) and 103.2(b)(1).

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not contest the director's findings and offers no substantive basis for the filing of the appeal. Under these circumstances, the regulations mandate the summary dismissal of 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. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.