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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

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER Date:

NOV 04 2010

IN RE:

Petitioner:

[REDACTED]

Beneficiary:

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:

SELF-REPRESENTED

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 3, 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 as a circus artist. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim. In his denial, the director addressed the petitioner's documentary evidence as it related to four of the ten criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Specifically, the director discussed the petitioner's documentary evidence relating to the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), artistic exhibitions or showcases criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). We note that at the time of the filing of the petition and in response to the director's request for additional evidence pursuant to the regulation 8 C.F.R. § 103.2(b)(8), the petitioner failed to specifically identify the criteria under the regulation at 8 C.F.R. § 204.5(h)(3) which he purportedly met. If it is the petitioner's contention that he met a particular criterion not discussed by the director, he never provided such a statement or argument in this regard. The burden is on the petitioner to establish eligibility. It is not the director's responsibility to infer or second-guess the intended criteria.

On appeal, the petitioner states that he is "submitting the following evidences as the attachments for I-290B that [he] filed earlier," but fails to specifically address the reasons stated for the denial and to identify any erroneous conclusion of law or statement of fact on the part of the director. Instead, the petitioner merely lists the documentary evidence submitted on appeal without providing any meaningful guidance to the AAO regarding what evidence or determination is in contention. Although the petitioner indicates that the evidence submitted on appeal was previously submitted, we note that the petitioner did submit certain documents that were not previously submitted. Again, however, the petitioner offers no explanation regarding how these new documents demonstrate error on the part of the director based upon the record that was before him.

The record of proceeding reflects that on April 13, 2009, the director requested the petitioner to submit additional documentation and notified the petitioner of all of the eligibility requirements for the criteria under the regulation at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. §§ 103.2(b)(8), (12), and (14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of*

Obaigbena, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

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. 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 petitioner does not contest the director's findings and offers no substantive basis for the filing of the appeal. In this case, the regulations mandate the summary dismissal of the appeal. As the petitioner failed to provide any specific statement or argument regarding the basis of his appeal, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.