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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:

NOV 17 2010

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

APPLICATION: 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. 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, 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 established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On March 26, 2009, the petitioner submitted a Form I-140, Immigrant Petition for Alien Worker, a statement and additional evidence. On March 28, 2009, the director issued a notice of intent to deny (NOID). On June 30, 2009, the petitioner filed a response to the NOID. After a thorough discussion of the evidence and the 10 regulatory criteria, the director denied the petition on July 20, 2009. The petitioner submitted a timely Form I-290B, Notice of Appeal or Motion on August 18, 2009. On Part 2 of the Form I-290B, the petitioner stated that he would submit a brief or additional evidence within 30 days. In his brief on appeal, the petitioner requested an additional 6 months to submit evidence in support of his appeal. As of this date, the AAO has not received any additional evidence from counsel or the petitioner. Therefore, the record is considered complete as it now stands. For the reasons discussed below, we uphold the director's decision and summarily dismiss the appeal.

On the Form I-290B, the petitioner fails to specify any erroneous conclusion of law or statement of fact on the part of the director in denying the petition. Although the petitioner submitted a brief, he failed to adequately address the director's conclusions. In his statement on appeal, the petitioner refers to evidence already in the record of proceeding but does not provide any argument challenging the director's findings or statement to demonstrate error on the part of the director. The petitioner states that he would like to prove his eligibility by presenting more evidence of his work. The petitioner listed his work for the National Oceanic and Atmospheric Administration (NOAA), the development of a new approach in the field of atmospheric chemistry for the calculation of isoprene gas emission, the development of a technique for computing biogenic emission from plants, his presentations, his writings, his mentoring of Ph.D. students at Purdue University, and his nomination for the [REDACTED] Award. The petitioner's generalized reiteration of his work and conclusory statements fail to specify the particular details contested. Moreover, the petitioner provides no discussion regarding what criteria his additional evidence purportedly meets. The letter written by [REDACTED] Ph.D. on appeal is essentially the same as Dr. [REDACTED] letter in the record of proceeding dated January 7, 2009. The petitioner also submitted a copy of a nomination letter for the [REDACTED] Award written by [REDACTED] and dated July 10, 2009. The record contains a letter

written by Dr. [REDACTED] on December 10, 2008 and Dr. [REDACTED] letter on appeal provides no new information. Further, Dr. [REDACTED] July 10, 2009 nomination letter, the petitioner's nomination for the [REDACTED] Award, the petitioner's membership in the International Association of Hydrological Sciences (IAHS), and the petitioner's May 2009 presentation cannot be considered because they took place after the petitioner filed the Form I-140. A petitioner must establish eligibility for the benefit he is seeking at the time that the petition is filed. *See* 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship & Immigration Services (USCIS) requirements. *Id.* at 176. In addition, the petitioner listed information already in the record of proceeding.

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 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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.