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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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FILE:



Office: TEXAS SERVICE CENTER Date:

**NOV 23 2010**

IN RE:

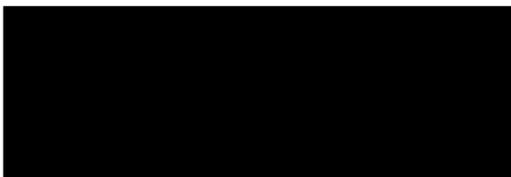
Petitioner:

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:



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. The petitioner filed an appeal, which the Administrative Appeals Office (AAO) rejected as untimely and returned to the director for treatment as a motion to reconsider. The director considered the late appeal as a motion to reopen and reconsider, dismissed the motion, and affirmed denial of the petition. The matter is now before the 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 in the sciences. The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

On appeal, counsel states:

Title 8 C.F.R., Section 8 C.F.R. § 204.5(h)(3) states that under #4 the petitioner may submit comparable evidence to establish the beneficiary's eligibility – this requirement was fulfilled by numerous certificates, diplomas and publications. Hence the overwhelming evidence at the initial filing was all provided. Decision should be reversed. Thank you for your time.

The petitioner's initial submission, response to the director's request for evidence, and motion did not previously request consideration of the petitioner's documentation as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). Counsel raises this issue for the first time in her argument on appeal. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria at 8 C.F.R. § 204.5(h)(3) "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the preceding regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

The petitioner has not established that the director's latest decision was incorrect based on the evidence of record at the time the motion was dismissed and the director's denial of the petition was affirmed. Counsel does not specifically challenge any of the director's findings or his analyses of the evidence submitted for the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Moreover, the latest appellate submission was unaccompanied by arguments or evidence addressing the regulatory criteria at 8 C.F.R. § 204.5(h)(3) which the petitioner claims to meet. Counsel indicated that the petitioner would not be submitting a supplemental brief or additional evidence.

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.

The petitioner has not specifically addressed the reasons stated for dismissal of the motion and denial of the petition, and has not provided any additional evidence pertaining to the classification sought. The appeal must therefore be summarily dismissed.

**ORDER:** The appeal is dismissed.