

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2

FILE:

Office: TEXAS SERVICE CENTER Date: **JAN 19 2011**

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:

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, with a fee of \$630. 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 March 2, 2007, 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 an inventor. At the time of the original filing of the petition, the petitioner submitted documentation but failed to specifically identify the criteria under the regulation at 8 C.F.R. § 204.5(h)(3) he claimed to meet. It was not apparent from the review of the evidence to which criteria the evidence pertained. The burden is on the petitioner to establish his eligibility not on the director to infer or second-guess the intended criteria. As such, the director issued a request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) describing each of the ten criteria under the regulation at 8 C.F.R. § 204.5(h)(3). In response to the director's request for evidence, the petitioner submitted additional documentation but again failed to identify the intended criteria. Based on the petitioner's submitted documentation, the director determined in his decision that the petitioner failed to establish eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), and the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the petitioner requested an oral argument "in order to provide model of my inventions and discuss their benefit in changing the related industries and benefiting the public." The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, U.S. Citizenship and Immigration Services has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

In addition, rather than challenging any of the director's specific findings, the petitioner stated:

I am an Inventor from Iran. I have three different inventions, although apparently the in charge officer carelessly glanced at one of my inventions, the Air Filter.

* * *

My inventions have received national recognition. . . . These exhibits will satisfy the requirement of the Immigration. Whereas; the decision stated that I could not establish national or international recognition.

* * *

As a matter of fact, the soul of the law is in the hands of you people sitting there. The purpose of law is making justification between right and wrong. If the enclose[d] documents clearly indicates that my inventions are useful in this country and the world, and can be utilized in a better way in [the] United States, should all these things be ignored and just look for a high salary. Until I can mass product my inventions, no one knows about them in order to pay high salary or establishing the critical role in better living of the public and resulting in having many articles published, commercial success or receiving prizes and awards.

The petitioner also submitted a partial translation for the bylaws of the Association of Inventors, a personal statement explaining his work that was previously submitted, and a letter to the Governor of Maryland offering his services.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that “[a]n 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 case, the petitioner has not identified as a proper basis for the appeal an erroneous conclusion of law or a statement of fact in the director’s decision. Instead, the petitioner claims that he is eligible as an alien of extraordinary ability because his “inventions are useful for this country” and “have received national recognition.” Again, the petitioner offers no argument that demonstrates error on the part of the director based upon the record that was before him and again fails to address any of the specific regulatory criteria at 8 C.F.R. § 204.5(h)(3). Moreover, the petitioner claimed that “[u]ntil [he] can mass product [his] inventions, no one knows about them in order to pay high salary or establishing the critical role in better living of the public and resulting in having many articles published, commercial success or receiving prizes and awards.” Eligibility must be established at the time of filing. 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). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner *will* be able to meet the regulatory criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3) at some undetermined time in the future is not sufficient to establish eligibility for this classification. The fact remains that any sustained national or international acclaim of the petitioner has never been established.

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. As the petitioner offers no substantive basis for the filing of the appeal, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is dismissed.