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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

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DATE: OFFICE: TEXAS SERVICE CENTER

FILE: 

MAY 06 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:



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 February 27, 2008. The director dismissed the motion to reopen and the motion to reconsider on December 17, 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 martial arts instructor. At the time of the original filing of the petition on July 27, 2007, the petitioner claimed 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), and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). On January 2, 2008, the director issued a request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8). In response, the petitioner submitted additional documentation regarding the awards criterion, the membership criterion, and the leading or critical role criterion.

In the director's decision on February 27, 2008, he discussed the petitioner's documentary evidence as it related to each of the three claimed criteria and found that the petitioner failed to establish eligibility for any of the criteria. On March 28, 2008, the petitioner filed a motion to reopen and motion to reconsider pursuant to the regulation at 8 C.F.R. § 103.5(a) and again claimed the petitioner's eligibility for the awards criterion, the membership criterion, and the leading or critical role criterion. In addition, the petitioner claimed for the first time his eligibility for the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). On motion, the director addressed the petitioner's documentary evidence as it related to each of the four claimed criteria and found that the petitioner failed to overcome any of the grounds originally stated in his decision and that the petitioner failed to establish eligibility for the high salary criterion.

On appeal, rather than challenging any of the director's specific findings, counsel summarized the documentation previously submitted as well as the petitioner's achievements for the awards criterion, the membership criterion, and the leading or critical role criterion. For example, regarding the leading or critical role criterion, counsel stated:

[The petitioner] has been a Taekwon-Do instructor since 1984. He has achieved the Fourth Degree Black Belt, the Master Instructor certification in the field of Taekwon-Do. He has worked as a Lead Instructor for [REDACTED] of Taekwon-Do, establishing two schools. The [REDACTED] of Taekwon-Do was recognized for outstanding achievement and inspiration by the International School of Taekwon-Do. Students at [REDACTED] of Taekwon-Do excelled and were top competitors at all regional and national competitions they attended.

Counsel also cites to a federal district court case and several unpublished decisions of the AAO. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters even arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

Regarding the unpublished decisions of the AAO, counsel has provided no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, counsel's general reference to case law and unpublished decisions is not sufficient basis for a substantive appeal, because it does not show how the director erred in this particular proceeding.

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, counsel 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

We note that counsel did not address or contest the decision of the director or offer additional arguments for the high salary criterion. The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Atty Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). Moreover, counsel claimed for the first time on appeal the petitioner's eligibility for the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). As this issue was not raised before the director, the director could not have erred in his decision on this matter.

Even if considered, counsel's assertion regarding the judging criterion is not persuasive. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." Although counsel stated that the petitioner "has instructed in the field of Taekwon-Do at various prestigious schools and organizations since a young age" and "has coached and trained members of the Canadian Team for international Taekwon-Do competitions, and refereed national and international competitions," counsel failed to demonstrate that the petitioner's coaching and training equates to being "a judge of the work of others." In fact, counsel did not refer to any previously submitted documentary evidence or submit additional documentary evidence on appeal that demonstrates that the petitioner has participated as a judge of the work of others. While a review of the record of proceeding reflects that the petitioner has instructed and trained individuals and teams, such as the Canadian Team, the record falls far short in demonstrating that he has judged the work of others. Furthermore, although the petitioner indicated on his resumé that he "[r]efereed at national and international competitions in Canada and USA," the record of proceeding fails to reflect any evidence of such referee experience. Regardless, we note that if the petitioner acted as a referee and simply enforced the rules of a match and sportsmanlike competition, then his participation as a referee cannot be said to have involved evaluating or judging the skills or qualifications of the participants. Without further evidence such as that he awarded points or chose the ultimate winner, evidence regarding officiating at a competition is insufficient to meet this criterion.

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

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of fact for the appeal. As counsel did not contest any of the findings of the director and offers no substantive basis for the filing of the appeal for any of the criteria, the regulations mandate the summary dismissal of the appeal.

**ORDER:** The appeal is dismissed.