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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**

B2

[REDACTED]

DATE: OCT 20 2010 OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 18, 2010, 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 chef. In the director's decision, he determined that the petitioner failed to meet the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), 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 C.F.R. § 204.5(h)(3)(ix). In fact, the director determined that the petitioner failed to meet any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the petitioner argues:

I would like to appeal your decision by providing your office with further evidence that has not been previously submitted. Per your request in the decision letter, I am accompanying with Form I-290B, additional documents that apply to the regulation at title 8, Code of Federal Regulations, section 204.5(h)(3) part (vi) concerning evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. Also more evidence is presented outside those regulations pertaining to the applicant's reputation in terms of national and international recognition especially from a major source like the world renown civil rights and minority leader Mrs. [REDACTED]

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 of contesting the director's decision regarding the awards criterion, the leading or critical role criterion, and the high salary criterion, the petitioner claims eligibility for the first time on appeal for the authorship of scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Again, the petitioner offers no argument that demonstrates error on the part of the director based upon the record that was before him. As the petitioner failed to contest the decision of the director or offer additional arguments regarding the awards criterion, the leading or critical role criterion, and the high salary criterion, the AAO, therefore, considers these issues to be abandoned and will not further discuss those criteria on appeal. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005).

Regarding the scholarly articles criterion, on appeal, the petitioner submitted a letter from the "Editor of [REDACTED]" who stated:

We would like to confirm that [the petitioner] has published an article in the 2002 November issue. The topic was "Best ingredients for Dumpling style food". In

this article, [the petitioner] gave little tricks and tips on how to choose the right ingredients when cooking dumpling style foods and the right way of cooking them. This article was well received by local readers and reviews showed that the readers found it to be extremely useful and enlightening.

The regulation at 8 C.F.R. § 103.2(b)(2) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In this case, the petitioner failed to submit primary evidence, such as the actual article, or any documentary evidence demonstrating that primary evidence or secondary evidence does not exist or cannot be obtained. As such, the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(2).

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien’s authorship of *scholarly articles* in the field, in professional or major trade publications or other major media [emphasis added].” Generally, *scholarly articles* are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, the letter fails to reflect that the food article contains the characteristics of a scholarly article. As there is no evidence such as that the petitioner’s article was peer-reviewed, references any sources, or was otherwise considered “scholarly,” the petitioner failed to establish that the article is insufficient to meet this criterion. Moreover, this regulatory criterion also requires the authorship of scholarly articles in professional or major trade publications or other major media. The petitioner failed to submit any documentation to establish that [REDACTED] is a professional or major trade publication or other major media.

Moreover, even if the petitioner were to submit supporting documentary evidence showing that the article meets the elements of this criterion, which he has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires more than one scholarly article. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snappnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

Finally, even if the petitioner were to prevail on the single issue raised on appeal, and the AAO does not imply that he would, such a conclusion would not overcome the director’s ultimate conclusion that the petitioner failed to meet at least three of the criteria at the regulation at 8 C.F.R. § 204.5(h)(3).

Furthermore, the AAO notes that the petitioner submitted a letter from ██████████ President of the ██████████ American Association, who stated that the petitioner is “a great contributor to the cause of the ██████████ people.” However, the petitioner failed to indicate which criteria, if any, the letter purportedly meets. There is no indication that the letter from Mr. ██████████ meets any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 does not contest the director’s findings 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.