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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 2011

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]
[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:

[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, 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 April 12, 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 musician and performer. 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 published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), and the high salary criterion pursuant to the regulation at C.F.R. § 204.5(h)(3)(ix). The director also determined that the petitioner did meet the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, rather than challenging any of the director's specific findings, counsel merely repeats the language of the statute and regulations and generally claims that the documentary evidence meets the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Counsel generally states:

[The] [i]mmigration officer erred in denying the I-140 petition of [the petitioner], who is an extraordinary and accomplished musician, unique singer and talented pianist. Substantial amount of evidence was submitted to establish that his petitioner is truly an extraordinary musician, with sustained national and international acclaim, who seeks to continue work in US and has done so already, and whose entry as an immigrant to US will substantially benefit the US and its music world. This petition presented evidence of internationally recognized awards and information about such awards; evidence of published material this petitioner in major media; evidence that petitioner did judge work of others; evidence of petitioner's original contribution – not many can combined [sic] A22 with Turkmen Folk music. Numerous documents were ignored and not completely considered. Please review this case in its entirety and approved the I-140 petition.

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. Instead, counsel made general assertions without specifically identifying any erroneous conclusion of law or statement of fact for the appeal. Again, counsel offers no argument that demonstrates error on the part of the director based upon the record that was before him. It is noted that counsel claimed the petitioner's eligibility for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) for the first time on appeal. There is no indication from a review of the record of proceeding that counsel previously claimed the petitioner's eligibility for the original contributions criterion, and the director found that no evidence was submitted for that criterion. In addition, counsel does not refer to any documentary evidence to support her assertions that certain evidence was allegedly “ignored and not completely considered.”

The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984).

Although on appeal the petitioner submitted a self-serving affidavit that summarized her musical education and experience, the petitioner does not allege that the director misapplied the law or statement of fact in his decision. Furthermore, the affidavit does not overcome any of the deficiencies cited by the director. For example, the director specifically and sufficiently discussed the petitioner's awards and how they failed to establish the national or international recognition for excellence in the field. While in her affidavit the petitioner indicated her participation and placements in competitions, the petitioner failed to address the national or international recognition for excellence of her awards as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i). Moreover, the petitioner's affidavit fails to mention any published material about the petitioner relating to her work pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Finally, neither the petitioner's affidavit nor counsel's arguments on appeal contest the decision of the director regarding the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005).

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 counsel 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.