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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



DATE: APR 06 2012

Office: TEXAS SERVICE CENTER

FILE: 

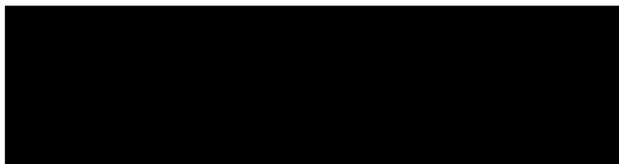
IN RE:

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 November 23, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

I. Summary Dismissal

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 equestrian performer. Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate “sustained national or international acclaim” and present “extensive documentation” of his or her achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

A review of the record of proceeding reflects that at the time of the original filing of the petition, the petitioner claimed eligibility for only two of the criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Specifically, the petitioner claimed eligibility for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). On September 24, 2009, the director issued a notice of intent to deny the petition pursuant to the regulation at 8 C.F.R. § 103.2(b)(8) stating that the documentary evidence submitted by the petitioner failed to demonstrate that she made original contributions of major significance and that she performed in a leading or critical role, as well as stating that the reference letters submitted by the petitioner failed to establish that she has displayed her work at artistic exhibitions or showcases pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Moreover, the director stated:

[W]hile reviewing the current petition USCIS also noted that the letter submitted by [REDACTED] states that the petitioner has been employed by them since December 4, 2001. However, the petitioner has previously submitted documentary evidence to USCIS which stated that she had been employed by [REDACTED] from December 1, 2001 through March 10, 2006.

The petitioner’s former employer has indicated that some of the evidence submitted by the petitioner for two separate petitions was fraudulent.

The director did not provide any further elaboration pertaining to his statement that the petitioner’s former employer submitted some evidence that was fraudulent for two other petitions. In response to the director’s notice of intent to deny, counsel did not contest the findings of the director or offer additional documentation regarding the petitioner’s eligibility as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. In fact, counsel

made no mention of the petitioner's eligibility for any of the criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Instead, counsel addressed the petitioner's discrepancy in her dates of employment with [REDACTED]. Specifically, counsel claimed:

Your records will confirm that [REDACTED] served as an agent and primary employer for [the petitioner] when she left [REDACTED] and moved on to a new position at [REDACTED] in Kissimmee Florida in P-1 status. [REDACTED] represented many circus performers, many of whom worked with [REDACTED] in the Orlando, Florida area and beyond. A copy of a letter provided by [REDACTED] confirming the employment of [the petitioner] at [REDACTED] in 2002 is attached as EXHIBITA. Per the most recent USCIS agency memorandum, the long standing tradition of agents acting as petitioner's [sic] for P-1 and other performers has once again been ratified. Any inference that something must have been wrong for the P-1 petition to have been filed by an agent for a former Ringling P-1 performer to move to [REDACTED] has no merit in this regard.

On November 23, 2009, the director denied the petition and found that the petitioner failed to establish eligibility under any of the criteria. In addition, the director stated:

The petitioner also included a letter signed by [REDACTED] on November 1, 2002. However, on February 2, 2007, [REDACTED] pleaded guilty to knowingly providing false information to USCIS in pursuit of immigration benefits for clients of [REDACTED]. On March 29, 2007, [REDACTED] provided USCIS with a signed declaration indicating that several letters had been fraudulently obtained by him and provided to USCIS with an I-140 petition filed by [REDACTED] for [the petitioner], the I-140 was denied.

Subsequently a second I-140 petition was filed for [the petitioner] by [REDACTED] represented by attorney [REDACTED]. The I-140 petition filed by [REDACTED] includes copies of the same fraudulent documents included with the I-140 petition filed by [REDACTED]

The instant I-140 petition which was filed on December 29, 2006 was accompanied by a recommendation letter from [REDACTED] signed for by [REDACTED] Dated February 20, 2003; which was identified by [REDACTED] as one of the fraudulent documents. Also, the petitioner submitted a recommendation letter signed for by [REDACTED] dated September 24, 2006.

In his declaration [REDACTED] provided signed statements confirming that a previous recommendation letter from the [REDACTED] signed for by [REDACTED] dated December 18, 2002; was among the fraudulent

documents that had been previously presented to USCIS by the petitioner or by [REDACTED] on her behalf. Also, [REDACTED] declaration states the contracts submitted with the I-129 petitions for the petitioner in this case, were fraudulent and that the petitioner was never employed in accordance with either of the I-129 petitions filed on her behalf thus the recommendation letter from [REDACTED] that counsel submitted has no validity nor does it verify the petitioner's employment with [REDACTED]

On appeal, counsel states that "the applicant appeals the finding of fraud as alleged in the USCIS Decision." Counsel did not contest the findings of the director or offer additional documentation regarding the petitioner's eligibility as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. Specifically, counsel did not claim that the petitioner submitted qualifying evidence of at least three of the ten regulatory categories of evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Moreover, counsel did not claim that the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

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, although counsel contests the director's purported finding of fraud, which will be addressed below, 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 regarding the petitioner's eligibility as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. As such, the regulations mandate the summary dismissal of the appeal.

II. Consolidation of Appeals

Counsel requests on appeal:

Please note that a parallel case involving the EB-3 I-140 with petitioner [REDACTED] is referenced several times in this brief. The USCIS Decision itself also refers to the same EB-3 I-140. The revocation of that EB-3 I-140 [REDACTED] and the subsequent Decision denying the Motion to Reopen/Reconsider is also on appeal, and a brief will be filed within the next month. These two cases involve essentially the same parties, the same forged letters, and the same factual questions and the same Immigration Officer. . . . In order to have one clear and fair decision on all facts and issues and to avoid conflicting findings, and conserve administrative resources, we respectfully request that the cases be consolidated and decided together.

Counsel's request to consolidate the appeals is denied. A review of the record of proceeding reflects that the petitioner is also the beneficiary of a skilled worker petition pursuant to section 203(b)(3)(A)(i) of the Act filed on her behalf by [REDACTED]. The director revoked the approval of this petition on November 30, 2009. The director dismissed the petitioner's motion to reopen and motion to reconsider on January 13, 2010. Counsel submitted an appeal on January 22, 2010, which is currently pending with the AAO. The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states in pertinent part:

(B) Meaning of affected party. For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

In order to properly file an appeal, the affected party is "the person or entity with legal standing in a proceeding." See 8 C.F.R. § 103.3(a)(1)(iii)(B). In this instance, the alien is the beneficiary of the skilled worker petition and has no legal standing to consolidate that appeal into her self-petitioning appeal of an alien of extraordinary ability. See 8 C.F.R. § 103.3(a)(1)(iii)(B). Moreover, pursuant to section 286(m) of the Act, 8 U.S.C. § 1356, USCIS is required to recover the full cost of adjudication. In addition to the statutory requirement, Office of Management and Budget (OMB) Circular A-25 requires that USCIS recover all direct and indirect costs of providing a good, resource, or service.¹ As such, Medieval Knights, LLC will receive a separate decision regarding its appeal of the revocation of the approval of the skilled worker petition. For these reasons, counsel's request to consolidate the appeals is denied.

III. Fraud

Counsel claims on appeal:

The USCIS has blatantly disregarded its own regulations by failing to timely disclose potentially derogatory information regarding forged recommendation letters. Applicant was thus deprived of the opportunity to rebut such evidence before the decision to deny was rendered.

Although counsel references issues throughout his brief that the director raised in the revocation of the approval of the petition filed by [REDACTED] as well as the revocations of the approvals of the O-1 and P-1 nonimmigrant visa petitions that were filed on behalf of the beneficiary by [REDACTED] the scope of the AAO's decision will be limited to this petition for an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. As discussed previously, the director did not deny the petition because some of the documentary evidence was fraudulent and did not enter a formal finding of fraud. Rather the director determined that the documentary evidence failed to demonstrate that the

¹ See <http://www.whitehouse.gov/omb/circulars/a025/a025.html>. Accessed on March 6, 2012, and incorporated into the record of proceeding.

petitioner met at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), and that the petitioner demonstrated sustained national or international acclaim.

In the director's notice and decision, he indicated that previous immigrant and nonimmigrant petitions were filed on behalf of the petitioner that were submitted with fraudulent documentation supplied by [REDACTED] who was convicted under 8 U.S.C. §§ 1324(a)(1)(A)(iv) for inducing an alien to enter and reside in the United States and 18 U.S.C. § 1546(a) for false statement to a material fact in application, affidavit, or other document required by immigration laws. The regulation at 8 C.F.R. § 103.2(b)(16)(i) provides that "[i]f the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section." In this case, although the director chose to include information regarding [REDACTED] and other nonimmigrant and immigrant petitions, this information was not the basis of the director's decision that the petitioner failed to establish eligibility for an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. The issues raised by counsel on appeal regarding the opportunity to respond to all of the derogatory information and the willful and material misrepresentation of the petitioner are not relevant to the appeal of this petition; instead those issues will be addressed in the appeal of the revocation of the approval of the skilled worker petition filed by [REDACTED]

IV. Conclusion

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.