



**U.S. Citizenship  
and Immigration  
Services**

B2

[REDACTED]

DATE: **DEC 20 2012**

Office: NEBRASKA 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:

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be 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. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

On appeal, the petitioner, through counsel, fails to specifically address the stated reasons for the denial and to identify any erroneous conclusion of law or statement of fact on the part of the director. Instead, counsel submits the same brief on appeal that he utilized within the request for evidence (RFE) response with a new introduction being. Counsel explains that he is resubmitting the RFE response brief on appeal because the director could not consider the petitioner's evidence that postdated the petition filing date, concluding that the AAO is able to consider such evidence as this office "is able to conduct a De Novo Review of the petitioner's case." According to *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004), the AAO maintains de novo review of all questions of fact and law. Nevertheless, the AAO will not consider evidence relating to achievements that postdate the petition's filing date as probative evidence. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1), (12); see *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Moreover, the director's final decision did not disregard all of the evidence submitted in response to the RFE or counsel's assertions in the RFE response brief. Counsel does not explain how the director's conclusions on the evidence that does not postdate the filing of the petition were in error.

The reason for filing an appeal is to provide an affected party with the means to remedy what he or she perceives as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. See 8 C.F.R. § 103.3(a)(1)(v). Without such an error specifically identified within the appeal, the affected party has failed to identify the basis for the appeal. If the petitioner does not explain the specific aspects of the decision that he considers to be incorrect, he has failed to meaningfully identify the reasons for taking an appeal. In order to review the appeal, it would therefore be necessary to search through the record and speculate on what possible errors the petitioner claims. *Matter of Valencia*, 19 I&N Dec. 354, 355 (BIA 1986).

It is insufficient to merely assert that the director made an improper determination. Within an appeal, it should be clear whether the alleged impropriety in the decision lies with the interpretation of the facts or the application of legal standards. Where a question of law is presented, supporting authority should be included, and where the dispute is on the facts, there should be a discussion of the particular details contested. *Id.* The regulation at 8 C.F.R. § 103.3(a)(1)(v) allows the AAO to promptly deal with appeals where the reasons given for the appeal are inadequate to inform the AAO of the particular basis for the claim that the director's decision is wrong. *Cf. Matter of Valencia*, 19 I&N Dec. at 355. The petitioner must identify all of the errors made by the director as it relates to the claimed criteria. Otherwise, the AAO must speculate on what error the petitioner alleges. The resubmission of the RFE

response brief on appeal is insufficient as counsel has not identify any error that can be attributed to the director's decision.

As stated in the regulation at 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the concerned party fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. *Cf. Idy v. Holder*, 674 F.3d 111 (1st Cir. 2012) (where an alien fails to raise any legal issue regarding the Board of Immigration Appeals denial of an inadmissibility waiver, the Court of Appeals is deprived of jurisdiction). *See also Desravines v. U.S. Atty. Gen.*, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal are deemed abandoned); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief). In this instance, the petitioner has not sufficiently identified a basis for the appeal. As the petitioner failed to challenge the director's analysis in the final decision, the appeal must be summarily dismissed.

**ORDER:** The appeal is dismissed.