

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



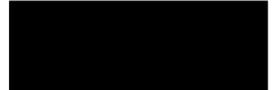
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DATE:

NOV 03 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:

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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, on his visa petition, indicated that he seeks classification as an "alien of extraordinary ability" pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director, in the request for evidence (RFE), noted that the petitioner provided no evidence in support of his visa petition. In response to the director's RFE, petitioner submitted a statement indicating that in Part 2 of the Form I-140, it should be reflected that he chooses to petition as "g. Any other worker (requiring less than two years of training or experience," instead of "a. An alien of extraordinary ability." Along with the statement attempting to clarify the category marked on the Form I-140, the petitioner submitted three letters of support that state that the petitioner is a good brick layer. The record does not contain an ETA Form 9089 Alien Employment Certification approved by the Department of Labor as required for workers requiring less than two years of training or experience. Section 203(b)(3)(C) of the Act.

In the director's decision, the director determined that because the petitioner failed to submit any evidence under the regulatory criteria outlined in 8 C.F.R. § 204.5(h)(3)(i)-(x), the petitioner failed to establish he is an alien of extraordinary ability under section 203(b)(1)(A) of the Act. Inasmuch as the petitioner indicated that the filing category reflected on the visa petition was erroneous, the director concluded that consistent with *Matter of Izummi*, 21 I&N Dec. 169 (Assoc. Comm'r 1998), and *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971), a petitioner must establish eligibility at the time of filing and thereby is precluded from making material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to USCIS requirements.

On appeal, the petitioner states that he is going to apply for benefits under section 245 of the Act, 8 U.S.C. § 1255, and essentially maintains that he is submitting all requested evidence. The petitioner submits all the documents he previously submitted in his RFE response and submits for the first time his birth certificate, marriage certificate, his children's birth certificates, children's social security cards, school records, tax documents, deed to his home, and several identity cards for him or his wife issued by various government entities. The statutory provision that the petitioner identifies on appeal does not correspond to the filing category identified on his visa petition. The documents that the petitioner submits for the first time on appeal are not probative or relevant in substantiating a claim of extraordinary ability. Critically, the petitioner has failed to identify any erroneous conclusion of law or fact in the director's decision disallowing the change in the visa petition category and ultimate finding that the petitioner failed to establish eligibility for the benefit sought. As stated in 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. The petitioner has not specifically addressed the reasons stated for denial and has not provided probative evidence. The appeal must therefore be summarily dismissed.



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ORDER: The appeal is dismissed.