

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

[REDACTED]

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DATE: **OCT 19 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on September 6, 2011, 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 in the arts as a painter. 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.

In the director’s decision, the director determined that the petitioner had “met the plain language of at least three of the ten criteria found at 8 C.F.R. § 204.5(h)(3).” The director then conducted a final merits determination in accordance with *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) and, after providing a discussion of the deficiencies in the submitted evidence, determined that the petitioner “ha[s] not reached a level of expertise indicating that you are one of that small percent of individuals who has risen to the top of their field of endeavor,” as required by 8 C.F.R. § 204.5(h)(2) and that the evidence “does not establish sustained acclaim.” See section 203(b)(1)(A)(i) of the Act.

On appeal, counsel asserts in part 3 on Form I-290B, Notice of Appeal or Motion, that “[t]he denial decision...is not supported by the facts on record and has failed to consider the merits of the case” and that “[t]he denial...is unfair and capricious.” Counsel’s subsequent brief generally repeats previous claims and, in fact, the appellate brief is almost identical to counsel’s response to the director’s request for evidence. Resubmitting a previous cover letter with the addition of a few new sentences requesting another “look” at previously submitted evidence is not a substantive appeal. Counsel’s brief references previously submitted evidence, without explaining why the AAO should find those claims any more persuasive than the director did. The only new discussion appears on page 10, where counsel quotes the director’s final merits determination analysis of the evidence of judging the work of others. In a single sentence following this quote, counsel identifies initial Exhibit E and subsequent Exhibit E-1 as providing the “answer to the questions” raised by the director. Initial Exhibit E relates to published material, none of which relates to the petitioner’s role as a judge. Initial Exhibit D and subsequent Exhibit E-1 both relate to the petitioner’s work as a judge, but none of the evidence in these exhibits, consisting of letters, certificates of appreciation and photographs of trophies, resolves the deficiencies raised by the director, including a lack of information about the artists whose work the petitioner judged and their level of expertise.

Counsel did not provide any additional evidence or offer any additional arguments identifying any errors of law or fact in the director's analysis such that the AAO could find the appeal to be substantive. *See Desravines v. United States Attorney Gen.*, No. 08-14861, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal are deemed abandoned).

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." Counsel offers no argument that demonstrates error on the part of the director based upon the record that was before him and the petitioner submits no new evidence other than his own statement which generally repeats counsel's assertions.

*As counsel did not contest any of the specific findings of the director and offers no substantive basis for the filing of the appeal, the regulations mandate the summary dismissal of the appeal.*

**ORDER:** The appeal is dismissed.