

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:

OCT 22 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 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, Texas Service Center, on March 27, 2012, 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 sciences as a physician. 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 failed to establish eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(ii), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii) and the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). The director did find that the petitioner satisfied the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). Finally, the director conducted a final merits determination in accordance with *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) and determined that the petitioner failed to demonstrate that he “is one of that small percentage who has risen to the top of their field of endeavor.” 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 and 8 C.F.R. § 204.5(h)(3).

On appeal, counsel asserts that the petitioner meets the original contributions criterion and the leading or critical role criterion. Specifically, counsel asserts in part 3 of Form I-290B, Notice of Appeal or Motion:

THE RECORD REFLECTS [THE PETITIONER]’S EXTRAORDINARY ABILITY IN HIS FIELD OF EXPERTISE WITH DEMONSTRATED SUSTAINED NATIONAL ACCLAIM. The Service concedes that two of the categories ha[ve] already been met – JUDGE OF THE WORK OF OTHERS and AUTHORSHIP OF SCHOLARLY ARTICLES.

ORIGINAL SIGNIFICANT CONTRIBUTIONS

We submit that [the petitioner] has significantly contributed to the field of ANESTHESIOLOGY, through his research and clinical work. The previously

submitted evidence shows that [the petitioner] has made contributions to the field which have been considered significant and original. [The petitioner] has received invitations from conferences around the world to present his research because his research is considered that important. He has also received invitations to review on-going research and write manuscripts together for publication.

LEADING {OR} CRITICAL ROLE

The attached documents and reference letters along with the previously submitted evidence shows that [the petitioner] has performed in a leading or critical role for organizations that have a distinguished reputation.

The AAO notes that, contrary to counsel's statement above referencing "attached documents and reference letters," no additional documentation was included. Furthermore, counsel indicated that "[n]o supplemental brief and/or additional evidence will be submitted." Counsel generally repeats previous claims, without explaining why the AAO should find those claims any more persuasive than the director did. Counsel did not provide any additional evidence or offer any additional arguments identifying any errors of law or fact in the director's analysis. *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). Counsel does not specifically challenge any of the director's findings or point to specific errors in the director's analyses of the documentary evidence submitted for the categories of evidence at 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 matter, counsel has not identified an erroneous conclusion of law or a statement of fact in the director's decision as a proper basis 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 includes no additional evidence.

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.