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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: Office: NEBRASKA SERVICE CENTER FILE: 

NOV 12 2013

IN RE: Petitioner: 
Beneficiary: 

APPLICATION: 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on December 5, 2012 and reaffirmed that decision on motion on May 8, 2013. The matter is now before the Administrative Appeals Office (AAO) as an appeal of the director's decision on the motion. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, as a musician and music instructor, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's 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 of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective 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.

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 reached this conclusion after determining that the petitioner did not meet any of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). More specifically, with respect to the criteria for which the petitioner submitted related evidence, the director concluded that the petitioner (1) had not established that the musical groups of which she is a member are associations that require outstanding achievements; (2) submitted advertisements rather than published materials that were about her, relating to her work; (3) provided letters that did not specifically explain her impact in the field consistent with contributions of major significance in the field; (4) had not established the display of her work as a music instructor; (5) had not documented that the schools she founded enjoy a distinguished reputation; and (6) had not documented the commercial success of her compact discs.

The petitioner subsequently filed a motion to reopen and reconsider requesting that the director consider additional evidence pertaining to additional criteria as an alien of extraordinary ability under the regulations. The director accepted the motion but concluded that the petitioner failed to overcome the grounds for denial. Specifically, the director concluded that the petitioner's letter confirming that she had founded two schools and hired ten employees and general attestations of her talent and knowledge did not serve to overcome the lack of the requisite initial evidence satisfying at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the petitioner asserts that the director erroneously based his determination largely as a music instructor and that the bulk of her documentation was in support of her claim as a musician of extraordinary ability. She further asserts generally that the evidence she previously submitted meets three of the regulatory criteria. The petitioner also vaguely references the problems of a woman artist in an Islamic country and submits additional support letters, along with background information about the authors of the letters. Finally, the petitioner submitted two licenses, one of which postdates the filing of the petition, and a contract which postdates the filing of the petition.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides, in pertinent part, the AAO “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, the petitioner did not specifically identify an erroneous conclusion of law or statement of fact in the director’s May 8, 2013 denial. As noted above, the petitioner asserts that the director’s original decision on the petition erroneously focused on the petitioner’s eligibility as a music instructor, rather than as a musician. The director on August 2, 2012, issued a Request for Evidence (RFE) to the petitioner, instructing the petitioner to supplement the record with additional evidence of her eligibility. In her response to the RFE, dated October 15, 2012, the petitioner stated: “Although, I work as female music director, instructor and musician, but my main field of endeavor as a founder, manager and instructor, **is music instructor**. Therefore, my extraordinary ability as a competitor is music instructor.” (Bold emphasis in original.) Consequently, the record does not support the petitioner’s current assertion that the director should have based the decision on a claim as a musician. Moreover, the only criterion under which the director made the distinction between ability as a musician and ability as a music instructor is under the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). Under other criteria, the director considered the petitioner’s evidence (membership in musical groups, advertisements of performances, compact discs), but concluded that the evidence did not meet the plain language requirements of the criteria. Accordingly, the petitioner’s passing reference to her area of expertise without further discussion is insufficient to raise that ground on appeal. *See Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009). While the petitioner states that “all of the documents (national and international) evidences that I submitted previously would satisfy the three criteria,” she does not specify which three criteria she satisfies or identify any specific error of law or fact in the director’s decisions. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Id.*

As with the letters submitted on motion, the new letters merely praise the petitioner’s ability as a musician and entrepreneur without addressing any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). These new letters do not point to any error of law or fact in the director’s previous decisions. Regarding the license and contract that postdate the filing of the petition, 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. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). The one license that predates the filing of the petition is not relevant evidence for the classification sought. Rather, licenses can be relevant evidence for the lesser classification set forth at section 203(b)(2) of the Act, aliens of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(C).

As the petitioner has failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal, the appeal must be summarily dismissed, pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v).

ORDER: The appeal is dismissed.