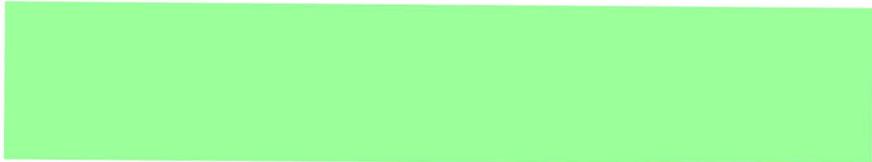


(b)(6)

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

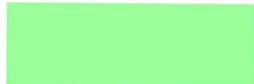


U.S. Citizenship  
and Immigration  
Services

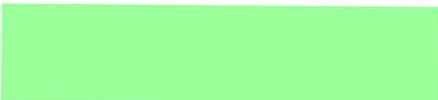


DATE: **MAY 14 2016** Office: NEBRASKA SERVICE CENTER

FILE:



IN RE: Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

NON-PRECEDENT DECISION

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**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification for the beneficiary as an alien of exceptional ability, as a “Planner II – Urban Design,” pursuant to section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A). The petitioner further asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.5, Schedule A, Group II.

The director found that “[s]ince it has been determined that the beneficiary is not eligible for certification under Schedule A, the petition is not supported by an approved individual labor certification...[and] must be...denied.” The director also found that “the evidence does not show that the beneficiary has received widespread acclaim and international recognition from recognized experts in the field.”

On appeal, the petitioner submits a statement on the Form I-290B, Notice of Appeal or Motion, and previously submitted evidence. For the reasons discussed below, upon review of the entire record, the petitioner has not established the beneficiary’s eligibility for the classification sought.

I. SCHEDULE A, GROUP II DESIGNATION

(a) Law

The regulation at 20 C.F.R. § 656.15(d)(1) provides, in pertinent part:

An employer seeking labor certification on behalf of an alien to be employed as an alien of exceptional ability in the sciences or arts (excluding those in the performing arts) must file documentary evidence showing the *widespread acclaim and international recognition* accorded the alien by recognized experts in the alien’s field; and *documentation showing the alien’s work in that field during the past year did, and the alien’s intended work in the United States will, require exceptional ability*. In addition, the employer must file documentation about the alien from at least two of the following seven groups:

- (i) Documentation of the alien’s receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;
- (ii) Documentation of the alien’s membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields;

NON-PRECEDENT DECISION

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- (iii) Published material in professional publications about the alien, about the alien's work in the field for which certification is sought, which shall include the title, date and author of such published material;
- (iv) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought;
- (v) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;
- (vi) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation;
- (vii) Evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

(Emphasis added.)

When the Department of Labor adjudicated Schedule A Group II filings, the Board of Alien Labor Certification Appeals (BALCA) concluded that the ultimate fact to be proven is that the alien has exceptional ability as compared with others in the same field; and that the various kinds of documentation mentioned in the regulation are suggested as possible methods of proof. *Matter of Allied Concert Services, Inc.*, 88-INA-14 (BALCA 1988). The evidence does not meet the plain language requirements of each criterion claimed.

(b) Analysis

(i) Evidentiary Criteria<sup>1</sup>

*Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields*

The petitioner submitted evidence of the beneficiary's membership in four associations. As stated by the director in his decision, the record did not establish that any of the associations require "outstanding achievement[] of their members as judged by recognized international experts in their disciplines or fields."

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

On appeal, the petitioner only addresses the beneficiary's membership in the [REDACTED]. Thus, the petitioner has abandoned any claim regarding the other memberships. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); see also *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association is both international and requires outstanding achievement as an essential condition for admission to membership. In addition, international experts in their disciplines or fields must judge admission to the association. On appeal, the petitioner asserts that a previously submitted letter from [REDACTED] Executive director of the Arizona Chapter of the [REDACTED] is evidence that the beneficiary's [REDACTED] certification "is a nationally and internationally recognized outstanding professional standard for urban planners." The letter states that "[t]o become certified, a planner must meet stringent requirements of a specified combination of relevant education and professional experience and must pass a comprehensive examination that tests skills and professional knowledge." The letter also states that "all planning professionals can become members of the [REDACTED]" According to a submitted document entitled [REDACTED] History and Organization," [REDACTED] is "responsible for the national certification of professional planners" and that there are "more than 15,000 certified planners" and "around 40,000 national members." Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Furthermore, there is no evidence that either the [REDACTED] or [REDACTED] is an international association, as opposed to a national one, or that membership is judged by international experts in the discipline.

Moreover, even if the petitioner were to submit supporting documentary evidence showing that membership in the [REDACTED] meets the elements of this criterion, which it has not, the plain language of the regulation at 20 C.F.R. § 656.15(d)(1)(ii) requires membership in more than one association. Significantly, not all of the criteria at 20 C.F.R. § 656.15(d)(1) are worded in the plural. Specifically, the regulation at 20 C.F.R. § 656.15(d)(1)(iv) only requires service on a single judging panel. Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(1)(2) requires a single degree rather than a combination of academic credentials).

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

*Published material in professional publications about the alien, about the alien's work in the field for which certification is sought, which shall include the title, date and author of such published material*

The record does not support the director's finding that the beneficiary meets this regulatory criterion. The plain language of the regulation not only requires the material to be published in "professional publications," but also that the material be "about the alien" and "about the alien's work." The reports authored by the beneficiary are not articles about the beneficiary and were not published in professional publications. Regarding the article in the [REDACTED] and the article on [REDACTED].com, evidence that simply mentions the beneficiary's name, quotes the beneficiary, or is not otherwise about the beneficiary is not published material about the alien, about the alien's work in the field. In addition, there is no evidence that either source qualifies as a professional publication.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

*Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought*

The director found that the beneficiary did not meet this criterion and the petitioner does not address it on appeal. Thus, the petitioner has abandoned any claims regarding this criterion. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9.

*Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation*

The director found that the beneficiary did not meet this criterion and did not claim this criterion in response to the director's request for evidence. The petitioner does not address it on appeal. Thus, the petitioner has abandoned any claims regarding this criterion. *Id.*

*Evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country*

The director found that the beneficiary did not meet this criterion and did not claim this criterion in response to the director's request for evidence. The petitioner does not address it on appeal. Thus, the petitioner has abandoned any claims regarding this criterion. *Id.*

As the petitioner did not establish that the beneficiary satisfies any of the above criteria, the petition may not be approved.

*NON-PRECEDENT DECISION*

II. NOTICE OF FILING

Beyond the decision of the director, the petitioner did not comply with the regulation at 20 C.F.R. § 656.10(d)(6) which provides, in pertinent part, that “the notice [of filing] must contain a description of the job.”

The methods vary by which a petitioner can be notified of evidentiary requirements. For example, a petitioner is considered to be on notice through the specific requirements outlined within the regulations, or through various forms of communication from USCIS to a petitioner or applicant noting an evidentiary deficiency or requesting more evidence. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). The regulations at 20 C.F.R. §§ 656.10(d) notified the petitioner of the specific requirements regarding the notice of filing.

The submitted notice of filing has a position duties section that states “See Job Description,” but does not include a job description section. Therefore, the notice does not comply with the regulation at 20 C.F.R. § 656.10(d)(6). For this reason alone, the petition must be denied.

III. ETA FORM 9089, APPLICATION FOR PERMANENT  
EMPLOYMENT CERTIFICATION

In addition to the above, the petitioner failed to sign the ETA Form 9089 as the employer as required by 8 C.F.R. § 103.2(a)(2). The regulation at 20 C.F.R. § 656.10(a)(3) states that “[a]n employer seeking labor certification for an occupation listed on Schedule A must apply for a labor certification under this section and § 656.15.” According to 20 C.F.R. § 656.10(c):

The employer must certify to the conditions of employment listed below on the Application for Permanent Employment Certification under penalty of perjury under 18 U.S.C. 1621(2). Failure to attest to any of the conditions listed below results in a denial of the application.

- (1) The offered wage equals or exceeds the prevailing wage determined pursuant to Sec. 656.40 and Sec. 656.41, and the wage the employer will pay to the alien to begin work will equal or exceed the prevailing wage that is applicable at the time the alien begins work or from the time the alien is admitted to take up the certified employment;
- (2) The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a prevailing wage paid on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage;
- (3) The employer has enough funds available to pay the wage or salary offered the alien;
- (4) The employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States;

- (5) The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;
- (6) The employer's job opportunity is not:
  - (i) Vacant because the former occupant is on strike or locked out in the course of a labor dispute involving a work stoppage;
  - (ii) At issue in a labor dispute involving a work stoppage.
- (7) The job opportunity's terms, conditions and occupational environment are not contrary to Federal, state or local law;
- (8) The job opportunity has been and is clearly open to any U.S. worker;
- (9) The U.S. workers who applied for the job opportunity were rejected for lawful job-related reasons;
- (10) The job opportunity is for full-time, permanent employment for an employer other than the alien.

The above conditions of employment are listed on page 9 of the ETA Form 9089 and require the employer's signature to certify the conditions of employment. As the petitioner failed to sign the ETA Form 9089 as the employer, the petitioner did not attest to any of the above conditions and the petition must be denied.

Finally, it is also noted that the petitioner failed to complete questions 23 through 26-A in section I of the ETA Form 9089.

#### IV. CONCLUSION

The documentation submitted has not established the widespread acclaim and international recognition accorded the alien by recognized experts in the alien's field. As a result, the alien cannot be found to qualify for exceptional ability under Schedule A, Group II designation. In addition, the notice of filing did not comply with the regulations and the petitioner submitted an incomplete and unsigned ETA Form 9089. Thus, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.