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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: EAC 01 067 50602 Office: VERMONT SERVICE CENTER Date: MAY 29 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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. 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 specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in pertinent regulations at 8 C.F.R. § 204.5(h)(3). That regulation lists ten evidentiary criteria; the petitioner must meet at least three of them to establish eligibility. In this instance, the petitioner claims to have satisfied seven of the ten criteria.

In denying the petition, the director did not address the evidence to any significant extent. The director's decision consists primarily of language from the statute and regulations, with only a single paragraph devoted to the specifics of this proceeding. This paragraph reads in part "you have not established how your recognition, awards, and professionalism compare to a photographer of the United States with extraordinary ability. The Service is unable to categorize your awards, work, and role of a photographer of extraordinary ability caliber as defined in INA 203(b)(1)(A)."

The director simply declares the evidence to be insufficient, without explanation. Furthermore, the petitioner has worked in China, rather than the United States, throughout her career, and was still in China as of the petition's filing date. Because the petitioner need only establish national acclaim, and she has done little if any work in the United States, the petitioner need not compare herself with U.S. photographers, provided she is able to establish national acclaim in China.

While the director's decision is deficient, we note also that the record of proceeding in support of the petition contains several deficiencies. Many of the exhibits, including but not limited to the petitioner's prizes, are not of self-evident significance. The burden is on the petitioner to demonstrate the significance of this evidence. The petitioner has submitted ample commentary from counsel, attesting to the claimed significance of various exhibits in the record, but the assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). When, for instance, counsel asserts that one of the petitioner's prizes "is ***the highest national level prize for outstanding professional photographers***" (emphasis in original), counsel fails to offer any objective documentary support for this claim. The claim remains uncorroborated. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

While the director has already issued two requests for evidence, these notices amounted to little more than lists of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), with no explanation of why the petitioner's previous efforts to satisfy those criteria were insufficient.

The burden is on the petitioner to establish that she is among China's most highly acclaimed news photographers, rather than merely successful in her craft. If the director believes the evidence to be insufficient, the director must offer some explanation beyond the simple finding that the evidence is insufficient. Otherwise, the petitioner has no meaningful opportunity to rebut that finding on appeal.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.