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

(b)(6)

DATE: JAN 26 2015 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 (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 employment-based immigrant visa petition was denied by the Director, Texas Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

The petitioner asserts within the appellate statement that his previously submitted evidence showed that he met the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), the scholarly articles criterion at 8 C.F.R § 204.5(h)(3)(vi), and the leading roles criterion at 8 C.F.R. § 204.5(h)(3)(viii). In general, the appellate statement indicates: (1) that the petitioner has distinguished himself from his peers; (2) that he submitted clear evidence showing the petitioner has made significant contributions to the field; and (3) that his work has impacted the national interest. More specifically, the petitioner lists manuscripts "selected for publication or presentation," some of which have dates that have passed, and claims his selection to review for two journals, expert letters, and his work history show his eligibility for the contributions and the leading roles criteria.

On appeal, the petitioner does not specifically address the reasons stated for the denial nor does he identify any erroneous conclusion of law or statement of fact on the part of the director. Instead, the appellate brief provides a list of manuscripts by the petitioner with publication and presentation dates that postdate the filing date of the petition, June 25, 2013. Even if the petitioner provided documentation of these works, which he has not, this evidence did not exist at the time the petitioner filed the present petition. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). As noted by the director when addressing the scholarly articles criterion, the petition may not be approved if the petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). As the petitioner has not established that any of his manuscripts appeared in publications prior to the filing date, the petitioner has not established that the director erred in concluding that the petitioner has not satisfied the scholarly articles criterion at 8 C.F.R § 204.5(h)(3)(vi).

On appeal, the petitioner no longer address three criteria he previously claimed to meet. Specifically, the director determined that the petitioner did not submit evidence to satisfy the plain language requirements of the following criteria: (1) the awards criterion at 8 C.F.R. § 204.5(h)(3)(i); (2) the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii); and the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). As the petitioner does not address these criteria on appeal, the petitioner has abandoned his claims under these criteria. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30,

2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

In addition to listing articles and presentations that postdate the filing of the petition, the petitioner discusses two criteria on appeal: the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v) and the leading role criterion at 8 C.F.R. § 204.5(h)(3)(viii). In addressing the contributions criterion, the director first acknowledged the petitioner's research work in the field and several letters from those in the medical field. The director discussed multiple letters, noting that none of the letters demonstrated that the petitioner had impacted his field through original contributions that were of major significance. On appeal, the petitioner does not include any specific discussion of any of the letters on record in which he identifies the manner in which the director might have erroneously considered the letters. Rather, the petitioner provides a generalized discussion of the letters, asserting: "Numerous testimonies submitted with the original application as well as with the response to the request for evidence made clear that [the petitioner] is highly respected for his clinical abilities in the field." This general statement does not explain how the director erred in concluding that the references professed their esteem for the petitioner and discussed his skill and experience without explaining his influence in the field at a level consistent with contributions of major significance.

Second, regarding the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), the director indicated that the petitioner has "performed admirably as [a] Neonatologist and the other tasks he was assigned to perform." The director also discussed multiple letters outlining how the letters were not sufficient to demonstrate the petitioner's eligibility for this criterion. On appeal, the petitioner does not provide any discussion of which letter, combination of letters, or other evidence demonstrates how the petitioner's position within the hierarchy of an organization or establishment was consistent with a leading role or how his impact on an organization or establishment was consistent with a critical role. In addition, the petitioner does not assert that the director did not consider any of the previously submitted evidence.

The reason for filing an appeal is to provide an affected party with the means to remedy what he or she perceives as an erroneous conclusion of law or statement of fact within a decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). Without such an error specifically identified within the appeal, the affected party has not identified the basis for the appeal.

Additionally, the petitioner provides his curriculum vitae with the appeal, while also reiterating that the previously provided evidence demonstrated the petitioner's eligibility for the classification sought. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

As stated in the regulation at 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the concerned party does not identify specifically any erroneous conclusion of law or statement of fact for the appeal. *Cf. Idy v. Holder*, 674 F.3d 111, 116 (1st Cir. 2012) (where an alien fails to raise any legal issue regarding the Board of Immigration Appeals denial of an inadmissibility waiver, the Court of

Appeals is deprived of jurisdiction). *See also Desravines v. U.S. Atty. Gen.*, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues mentioned but not briefed on appeal are deemed abandoned); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief). In this instance, the petitioner has not sufficiently identified a basis for the appeal. The petitioner does not contest the director's specific findings and offers no substantive basis for the filing of the appeal. As the petitioner has not challenged the director's analysis beyond merely asserting that the director reached the wrong conclusion, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.