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: MAY 26 2015

FILE #:
PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision.** The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on March 31, 2014. The petitioner filed a motion to reopen the director's decision on April 25, 2014. The director dismissed the petitioner's motion on September 2, 2014. The matter of the director's decision on the motion to reopen is now before the AAO on appeal. We will dismiss the appeal.

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 regulation at 8 C.F.R. § 103.3(a)(1)(v) states that an appeal shall be summarily dismissed if the concerned party fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner's appeal relates to the director's latest decision, which was a motion to reopen. In that decision, the director discussed specific evidence and explained his conclusions why the evidence was insufficient to meet more than two criteria.

Within the appeal, the petitioner primarily provides general claims of error on the director's part. For example, the petitioner states: "The Service erred in denying this petition by not considering the voluminous evidence submitted in this matter . . . the Service erred in holding that [the petitioner] did not meet the requirements set out in (b), (e), (g), (h) and (i) of the Motion to Reopen/Reconsider." Such general statements, without specifics about how the director erred, are not sufficient to support an appeal. For example, the petitioner does not identify specific evidence that the director did not consider. Notably, U.S. Citizenship and Immigration Services (USCIS) determines the truth not by the quantity of evidence alone but by its quality. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989). The petitioner closes the appellate brief stating: "The service denial of the fact that the petitioner was a well compensated individual is without any basis in law or fact. The petitioner just did not present this evidence initially because it was likely that he met several prongs of the requirements." This statement is in reference to the director's determination that he would not consider the petitioner's evidence relating to the high salary or significantly high remuneration under the regulation at 8 C.F.R. § 204.5(h)(3)(ix) within the motion, as the petitioner was claiming eligibility under this criterion for the first time in the motion.

The petitioner's statement that the director's adverse determination under the high salary criterion "is without any basis in law or fact," does not sufficiently provide the manner in which the director committed an error in his determination under this criterion. Notably, the director cited *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988), in support of his conclusion and the petitioner does not distinguish this authority on appeal. Therefore, the appeal warrants a summarily dismissal. Even if we were to consider the petitioner's assertion of error under the high salary criterion, the evidence

presented would still be insufficient to satisfy the plain language requirements of this criterion. First, the petitioner stated within the motion brief that he did not previously submit such evidence because it was his opinion that the remainder of his submitted evidence would clearly demonstrate his qualifications for this classification. The instructions for the Form I-140, Immigrant Petition for Alien Worker state: "Evidence. You must submit all required initial evidence along with all the supporting documentation with your petition at the time of filing."

Nevertheless, a motion to reopen seeks to reopen proceedings so that new evidence can be presented and a new decision entered on a different factual record, normally after a further evidentiary hearing. *See Matter of Cerna*, 20 I&N Dec. 399 (BIA 1991). New evidence is that which is material to the present case and not previously submitted. This new evidence is expected to convey new value or new meaning to the case. However, the director did not consider the new evidence or new facts, and cited to *Matter of Soriano*, 19 I&N Dec. at 766, to support his decision not to consider the new evidence or facts the petitioner submitted in support of a motion to reopen.

Therefore, we will determine if the evidence submitted with the motion to reopen was sufficient to satisfy the high salary criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." Accompanying the motion to reopen, the petitioner provided three job offer letters, one of which postdates the filing of the petition. The regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration." The letter that postdates the filing of the petition does not establish a salary the petitioner had already commanded as of that date. Additionally, the plain language of the regulation requires the petitioner to submit evidence of "a high salary or other significantly high remuneration for services, in relation to others in the field." Therefore, the petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.[1] The petitioner offers no basis for comparison showing that his earnings were significantly high in relation to others in his field. The petitioner's assertions contained within the appellate brief are not evidence, and are not an appropriate comparison to others in the field. 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)).

The record does not contain objective earnings data showing that the petitioner has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work

[1] While we acknowledges that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99."

during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In the present case, the petitioner's submitted evidence does not establish that he had commanded a high salary or other significantly high remuneration for services in relation to others in the field. In light of the above, the petitioner has not established that he meets the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Therefore, even if the director had considered the petitioner's evidence and new claim within the motion to reopen, he still would not have demonstrated eligibility for this immigrant classification.

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 fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. *See also Desravines v. U.S. Atty. Gen.*, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues 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. Moreover, even if we considered the salary evidence the petitioner submitted before the director, that evidence did not serve to meet the criterion under which it was submitted. The petitioner does not contest the director's specific findings contained within the decision on the petitioner's motion, and offers no substantive basis for the filing of the appeal. As such, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.