

(b)(6)



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-E-

DATE: SEPT. 11, 2015

MOTION OF AAO DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an individual who focuses on “creativity as it relates to public policy,” seeks classification as a person “of extraordinary ability.” *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A); 8 U.S.C. § 1153(b)(1)(A). The Director, Nebraska Service Center, denied the petition. The Petitioner appealed the denial to this office and we dismissed the appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that our original decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record. *Id.*

The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) provides, in pertinent part, that a motion must be: “Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding.” In the instant motion, the Petitioner has not included a statement indicating if the validity of our January 26, 2015, decision has been or is the subject of any judicial proceeding. Regardless, the Petitioner has not otherwise shown his eligibility for the classification sought. Accordingly, we reaffirm our prior decision.

In support of his motion, the Petitioner submits a brief as well as copies of the following previously provided evidence: (1) a book review published in [REDACTED] in 2002 for the Petitioner’s book, [REDACTED] (2) a book review published in [REDACTED] in 1994 for the Petitioner’s book, [REDACTED] and (3) a letter from the [REDACTED] New York to the [REDACTED], Nigeria dated 2004 regarding the Sister City relationship between [REDACTED]

The Petitioner asserts that we erred in our determination that the evidence submitted does not meet the criteria set forth under the regulations at 8 C.F.R. § 204.5(h)(3)(iii), (v), and (viii). He does not cite legal authority in support of his position, but he does state the reasons he disagrees with our application of the law. We address the Petitioner’s arguments made on motion below.

(b)(6)

Matter of E-E-

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

On appeal, the Petitioner stated he met the requirements of 8 C.F.R. § 204.5(h)(3)(iii) when he submitted a review of his book, [REDACTED] in the

[REDACTED] as well as a review of his book, [REDACTED]

[REDACTED] In our dismissal, we stated that the Petitioner had not met this criterion because he did not show (1) that the book reviews were about him, and (2) that the publications in which they appeared are professional, major trade publications, or other major media.

On motion, the Petitioner states that both reviews are about him because a book is the creation of its author, and a book review is therefore an assessment of its author's intellectual merit. An article about a petitioner's work is not necessarily about the petitioner himself. *See generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). We included this citation in our previous decision and the Petitioner offers no contrary legal authority on motion. *See* 8 C.F.R § 103.5(a)(3) (requiring legal authority in support of a motion to reconsider). While a book review may both review a book and be about the author, we consider each book review on a case-by-case basis. The portion of the review the Petitioner quotes indicates that the review is about the book. It mentions the Petitioner only in relation to the fact that he wrote the book. It is insufficient that the published material merely mentions the Petitioner. 8 C.F.R. § 204.5(h)(3)(iii): *see Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012).

Regarding [REDACTED] review of [REDACTED]

[REDACTED] we specifically noted in our dismissal that, other than the Petitioner's former employment as the Director of Studies at the [REDACTED] the review included no other information about him. On motion, the Petitioner indicates that the review is about his personal vision for the transformation of the public sector when it stated: "The author's major focus is on positive identification, systematic development and fuller utilization of the creative imagination of Nigeria's public officers . . . With public servants and all those who have a stake in enhanced public service delivery in mind, [the Petitioner] has provided a tool to increase their productivity." Upon review, we reaffirm that this review is about the book and referred to the Petitioner as its author only in the context of describing the contents of the book itself.

The review in [REDACTED] included a reference to the acknowledgements section of the book where the Petitioner discussed the contributions of his family to his growth. It also described the book as the Petitioner's "labor of love," and explained that the Petitioner planned three more volumes. Even accepting that this review is about the Petitioner, relating to his work, the Petitioner must establish that the review appeared in a professional or major trade publication or other major media.

On motion, the Petitioner indicates that [REDACTED] should both be considered professional or major trade publications or other major media. The Petitioner

Matter of E-E-

indicates that the [REDACTED] is an academic journal founded in [REDACTED] that provides information regarding forthcoming African publications. Although this information suggests that journal is a professional publication, the article published in [REDACTED] does not meet the requirements of this criterion because it is not about the Petitioner, as explained above.

Regarding [REDACTED] we found in our dismissal that the Petitioner had not demonstrated it qualifies as a professional or major trade publication, specifically citing the lack of evidence regarding the publication's circulation or distribution data, or any other information to indicate its significance. On motion, the Petitioner does not address these issues, but indicates that [REDACTED] qualifies as such a publication by virtue of the organization that publishes it. The Petitioner refers to [REDACTED] as the journal of the [REDACTED] stating: "I submit that the authority and global prestige of the [REDACTED] as a leading professional organization in the field of creativity makes the association's journal [REDACTED] a major media." Regarding the authority and global prestige, he refers us to the "About us" page from the organization's website at [REDACTED] which we have reviewed.¹ However, the quote on which the Petitioner relies does not speak to the Association's authority or prestige. The quote states, in part, that the [REDACTED] "is the national organization of professionals in the field of creativity. Through its programs and services, it offers individuals and organizations opportunities for learning, professional development and networking." Even if the website did address this issue, however, USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, 2007 WL 9229758, *7 (C. D. CA 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that we did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status). As a result, the Petitioner has not provided independent, objective evidence that demonstrates the organization's authority or prestige.

In addition, the Petitioner is not persuasive that the authority or prestige of a publishing organization is sufficient to establish that one of its publications is a professional or major trade publication or other major media. The reputation of the issuing organization is an important factor to consider in evaluating a publication. However, an authoritative and prestigious organization may issue publications that do not fit these criteria. It remains that the Petitioner has not documented the distribution or circulation of the publications.

Accordingly, we reaffirm our previous finding that the Petitioner has not presented documentation of published material about himself in professional or major trade publications or other major media, relating to his work in the field for which classification is sought.

¹ See [REDACTED] accessed September 8, 2015 and incorporated into the record of proceeding.

(b)(6)

Matter of E-E-

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The Petitioner originally provided information about his book publications and letters of recommendation in support of this criterion. In our dismissal, we found that the evidence presented did not demonstrate that the Petitioner's works are of major significance in the field.

On motion, the Petitioner states: "Original discoveries and authorship of critically acclaimed and widely distributed books qualify me as having met the criterion of original scholarly contributions of major significance." However, the Petitioner has not demonstrated the wide distribution of his books. 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)).

While the Petitioner has provided the previously-cited book reviews, he has not shown that publishing books which receive positive reviews at the time of publication is indicative of a contribution of major significance in the field once disseminated in the field. The evidentiary requirements of this criterion necessitate that the Petitioner demonstrate that his works have constituted contributions of major significance in the field as a whole. Both book reviews, though favorable, predate the filing of the petition by at least ten years. The Petitioner has not offered evidence that the reviewed books have had an impact on the field after the favorable reviews.

Regarding the overall impact of his contributions, the Petitioner references the "unassailable expertise and integrity of the world's best known creativity scholars . . . who adjudge my ideas and contributions in the field of creativity as original, visionary, groundbreaking, and suggesting creative paths for the human condition." The Petitioner provided reference letters from several individuals who also work in the field of creativity studies. However, the Petitioner does not address on motion our concerns that the letters were conclusory and did not indicate a wide impact in the field. To meet this criterion, the contributions and their major significance must have already been realized rather than being potential or future. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). In this case, the recommendation letters in the record speak highly of the Petitioner and his work, but they do not include examples of realized significance.

Accordingly, the Petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner asserted on appeal that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation when: (1) he facilitated collaborations between the [REDACTED] and The [REDACTED]

(b)(6)

Matter of E-E-

██████████ and between ██████████ and ██████████ (2) he facilitated the establishment of a Sister City relationship between ██████████ New York and ██████████ Nigeria; (3) the Institute of African Studies, ██████████ requested his assistance in rebuilding the school; (4) The ██████████ applauded the Petitioner's activities; and (5) ██████████ accepted the Petitioner's request for support in the African Mass Creativity initiative. In the dismissal, we held that the evidence presented for the Petitioner's activities in each of these areas was not sufficient because it did not provide details regarding what the Petitioner actually did in the above roles. On motion, the Petitioner discusses only the first three roles. We address those three roles below and reaffirm here our previous conclusion that the record does not include details pertaining to the Petitioner's duties for and impact on ██████████ and ██████████

With regard to facilitating the memorandum of understanding between ██████████ and ██████████ the Petitioner refers to the letter requesting that he "set in motion the machinery for dialogue" between the two organizations. He then cites the fact that a memorandum of understanding was signed in 2011 by ██████████ President and the Director General of ██████████ as evidence that he was effective in this role. However, as we noted in the dismissal, the Petitioner has not offered information that explains what he did to facilitate the dialogue between the two institutions. For example, the record does not show whether his duties were limited to providing contact information or whether he was truly instrumental in negotiating the signing of the memorandum.

Even if the Petitioner could claim primary responsibility for the signing of the memorandum of understanding, however, he has not demonstrated that this level of involvement would mean he played a leading or critical role for the organizations involved. In the overall scheme of the activities of both institutions, the record does not reflect what, if any, significance this memorandum of understanding has on either party. The record does not include materials confirming that any concrete developments resulted from the memorandum. Accordingly, the Petitioner has not provided evidence to establish that the facilitator of such a memorandum would have played a leading or critical role for either organization as a whole, given the breadth and scope of both institutions' activities.

Similarly, the Petitioner has not shown that his role in facilitating sister-city status between ██████████ and ██████████ satisfies the requirements of this criterion. As noted in our dismissal, the Petitioner has not provided materials to explain what he did to facilitate the cities' relationship. As evidence, the Petitioner submitted a 2004 letter from the Mayor of ██████████ to the Minister of ██████████ in which the Mayor indicates he is appreciative of the Petitioner's efforts and states that he is "anticipating that through ongoing communications, facilitated by [the Petitioner], the ██████████ Sister City organizing committee and ██████████ Sister City organizers of ██████████ will develop mutually agreeable agenda and itinerary . . ." The letter does not include details regarding the Petitioner's involvement. In addition, the record does not contain information post-2004 to indicate that the sister-city relationship did, in fact, have a positive impact for either city.

As a result, the Petitioner has not demonstrated that his involvement with the sister-city relationship amounts to playing a leading or critical role in either city's operations. The Petitioner does not

(b)(6)

Matter of E-E-

indicate that his role for either city ever extended beyond the facilitation of the sister-city status. The evidence in the record also does not indicate any concrete results of the sister-city relationship. As a result, the Petitioner has not shown that the facilitator of such a status would constitute a leading or critical role for either of these large cities.

Lastly, the Petitioner indicates that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation when the [REDACTED] requested his assistance in rebuilding the school. The Petitioner provided a 2006 letter from the Director of the [REDACTED] expressing pleasure at learning that the Petitioner and his American and Canadian colleagues agreed to participate in continental revitalization initiatives at the University. As with the letter from the Mayor of [REDACTED] the Petitioner does not offer any materials post-2006 to indicate any further action was taken after receiving this initial letter from the Director of the [REDACTED]. The Petitioner has not provided any information regarding how he furthered the goals of the [REDACTED]. Without evidence to show what the Petitioner accomplished and the impact of any accomplishments, he has not demonstrated that he played a leading or critical role for the [REDACTED].

The motion will be denied 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 motion is denied.

Cite as *Matter of E-E-*, ID# 13163 (AAO Sept. 11, 2015)