



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

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

MATTER OF A-K-B-

DATE: AUG. 29, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a dream expert, seeks classification as an individual of extraordinary ability in the field of dream psychology. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those 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, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner satisfied one of the regulatory criteria, of which three are required to establish eligibility. On appeal, we made similar findings and reaffirmed them in two subsequent decisions on motion.

The matter is now before us on a third motion to reopen. In her motion, the Petitioner submits additional evidence and maintains that she meets two additional criteria as she has judged the work of others and served in a leading or critical role for an organization or establishment with a distinguished reputation.

Upon review, we will deny the motion.

## I. LAW

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence.<sup>1</sup> As noted in our previous decisions, however, the new facts must demonstrate eligibility as of the date of filing; a petition cannot be approved at a future date after a Petitioner becomes eligible under a new set of facts.<sup>2</sup> Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new

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<sup>1</sup> 8 C.F.R. § 103.5(a)(2).

<sup>2</sup> 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971); *see also Matter of Izummi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998) adopting the holding in *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

(b)(6)

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trial on the basis of newly discovered evidence.<sup>3</sup> A party seeking to reopen a proceeding bears a “heavy burden.”<sup>4</sup>

## II. ANALYSIS

The Director previously found that the record contains published material about the Petitioner in major media<sup>5</sup> and we agreed with that determination. At issue in the Petitioner’s motions is whether the Petitioner meets another two criteria.<sup>6</sup> In our most recent decision, which the Petitioner seeks to reopen, we considered her affirmations that she met the judging and leading or critical role criteria.<sup>7</sup> First, with respect to participating as a judge, we noted that the new letter from [REDACTED] board chair and former president of the [REDACTED] did not suggest that the Petitioner had performed the services described in the letter as of the filing date. We also stated that [REDACTED] did not detail what duties the Petitioner performed that constitute judging the work of others in the same or a related field. Second, we similarly found that [REDACTED] did not support his conclusory statement that the Petitioner performs a leading or critical role for [REDACTED] with a sufficient explanation of her impact on the entity as of the date of filing. Further, we reiterated the finding from previous decisions that the Petitioner has not demonstrated the distinguished reputation of [REDACTED]. Finally, we explained that general, solicited letters from local colleagues do not qualify as comparable evidence to confirm eligibility.<sup>8</sup> On motion, the Petitioner offers a new letter from [REDACTED] which she maintains clarifies her involvement with [REDACTED] as of 2011, well before she filed the petition. She also documents a new television appearance. For the reasons discussed below, the Petitioner has not established that she met more than one criterion as of the date of filing.

### A. Participation as a Judge of the Work of Others

The relevant criterion requires evidence of the foreign national’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.<sup>9</sup> The Petitioner relies on the new letter from [REDACTED] to show that she had performed as a judge prior to date of filing. He does not, however, state that the Petitioner was the site administrator prior to the filing date in January 2014. Rather, he confirms that she currently serves in that role and has been involved with [REDACTED] in some capacity since 2011.

<sup>3</sup> *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)).

<sup>4</sup> *Id.* at 110.

<sup>5</sup> 8 C.F.R. § 204.5(h)(3)(iii).

<sup>6</sup> According to the implementing regulation at 8 C.F.R. § 204.5(h)(3), a petitioner must have a one-time achievement (that is, a major, internationally recognized award) or provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

<sup>7</sup> 8 C.F.R. § 204.5(h)(3)(iv), (viii).

<sup>8</sup> The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to rely on comparable evidence where the regulatory standards at subparagraph (h)(3) do not readily apply to her occupation.

<sup>9</sup> 8 C.F.R. § 204.5(h)(3)(iv).

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Moreover, the new letter does not resolve that, as site administrator, the Petitioner serves as a judge of the work of others. While [REDACTED] affirms that the [REDACTED] has approved [REDACTED] online courses for continuing education for licensed therapists, he has still not sufficiently explained how the Petitioner, as site administrator, judges the work of others in her field or an allied field. [REDACTED] reiterates his prior statement that the Petitioner “oversees, grades, and judges the work of students.” Although our previous decision noted the lack of detail regarding the nature of the Petitioner’s judging responsibilities, he does not offer any specifics in his new letter.<sup>10</sup> A list of available courses from [REDACTED] website, which the Petitioner supplied with her second motion, does not support a finding that the Petitioner is responsible for judging the work of students. Many of the course descriptions suggest they are not graded. For example, the first course listed is a mentored course consisting of a presentation by [REDACTED] who will provide “feedback” to students’ required forum postings. Other courses appear to be rebroadcasts of symposiums at earlier conferences. In addition, none of the courses list the Petitioner as the presenter or teacher. Regardless, the routine grading of assignments by teachers does not constitute performing as a judge of the work of others as contemplated by the regulation; not every teacher participates as “a judge” simply by working as a teacher.<sup>11</sup> For the above reasons, the new evidence supporting this motion does not establish that the Petitioner satisfies this criterion.

**B. Leading or Critical Role**

The relevant regulation requires evidence that the foreign national has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.<sup>12</sup> We previously concluded that the Petitioner had not shown that she served as the site administrator for [REDACTED] as of the date of filing or that [REDACTED] enjoys a distinguished reputation. In his new letter, [REDACTED] does not confirm that the Petitioner was [REDACTED] site administrator prior to the date of filing in 2014. Rather, he discusses her role in scheduling a conference in 2016 and describes his future plans for her skills. This information does not address whether the Petitioner had performed in a leading or critical role for [REDACTED] as of January 2014.

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<sup>10</sup> The O\*Net website, prepared for the Department of Labor, provides the normal duties for web administrators. They include: (1) backing up or modifying applications and related data to provide for disaster recovery; (2) determining sources of web page or server problems, and taking action to correct such problems; (3) reviewing or updating web page content or links in a timely manner, using appropriate tools; (4) monitoring systems for intrusions or denial of service attacks, and reporting security breaches to appropriate personnel; and (5) implementing web site security measures, such as firewalls or message encryption. See <http://www.onetonline.org/link/summary/15-1199.03#Tasks>, accessed July 19, 2016, and incorporated into the record of proceeding. While we acknowledge [REDACTED] may assign duties that are different or additional to those typical of a site administrator, it is the Petitioner’s burden to corroborate [REDACTED] general statements with detailed evidence.

<sup>11</sup> USCIS offers serving on a Ph.D. dissertation committee as an example of qualifying evidence rather than suggesting every instructor, teacher, or professor meets this criterion. USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 8* (Dec. 22, 2010), <https://www.uscis.gov/laws/policy-memoranda>.

<sup>12</sup> 8 C.F.R. § 204.5(h)(3)(viii).

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\_\_\_\_\_ does confirm that the Petitioner “has been an active member of \_\_\_\_\_ since 2011, and has presented in two major symposiums at regional and annual conferences and also played a key role in organizing the regional conference in \_\_\_\_\_ does not, however, identify what the Petitioner’s duties were for the \_\_\_\_\_ regional conference in \_\_\_\_\_. We previously considered an email notice from \_\_\_\_\_ a regional representative of \_\_\_\_\_ affirming that the Petitioner “was an active part of the organizing committee for the \_\_\_\_\_ Regional Conference in \_\_\_\_\_. We found in our appellate decision that this information did not detail the nature of the Petitioner’s role and that she had not established the reputation of the committee for which she performed this role. \_\_\_\_\_ does not provide any new facts not present in \_\_\_\_\_ email correspondence. As stated in our most recent decision on motion, merely repeating the language of the statute or regulations does not satisfy the Petitioner’s burden of proof.<sup>13</sup> Similarly, USCIS need not accept primarily conclusory statements.<sup>14</sup> The record does not corroborate the nature of the Petitioner’s role for \_\_\_\_\_ as a whole by serving on this single committee.

Finally, the Petitioner did not provide any new evidence documenting the distinguished reputation of \_\_\_\_\_. Confirmation from \_\_\_\_\_ that it offers \_\_\_\_\_-approved continuing education courses does not constitute independent corroboration of its distinguished reputation in the field. For the above reasons, the new exhibits on motion do not demonstrate that the Petitioner has served in a leading or critical role for an organization or establishment with a distinguished reputation.

C. Comparable Evidence

The relevant regulation allows the Petitioner to provide comparable evidence where the regulatory criteria do not readily apply to her occupation.<sup>15</sup> In our previous decision, we reiterated that the Petitioner had not demonstrated that the criteria do not readily apply to her occupation and concluded that reference letters generally do not rise to the level of comparable evidence. On motion, the Petitioner does not explain which criteria, if any, do not readily apply to her occupation. She offers corroboration that she appeared on the \_\_\_\_\_. The submitted documentation does not confirm that the Petitioner was on this show prior to the date of filing in January 2014.<sup>16</sup> Moreover, we have already considered earlier television appearances under the published material criterion, a criterion she meets. Additional exhibits relating to that criterion do not constitute comparable evidence. Finally, the Petitioner once again references \_\_\_\_\_ letter, in which he requests that we reconsider our decision and affirms that she will serve on \_\_\_\_\_ board of directors in the future. As stated in our previous decision, solicited letters are generally not

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<sup>13</sup> See *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y. 1997).

<sup>14</sup> *1756, Inc. v. US Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990).

<sup>15</sup> 8 C.F.R. § 204.5(h)(4).

<sup>16</sup> As stated above, a petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49.

comparable to the types of objective evidence otherwise required by the ten criteria.<sup>17</sup> Accordingly, the Petitioner has not supplied persuasive comparable evidence.

#### D. Summary

The Petitioner has not filed a motion to reopen that is supported by new evidence documenting eligibility as of the date of filing. The new evidence does not demonstrate that the Petitioner has satisfied an additional two criteria. As the record continues to show that the Petitioner meets a single criterion, she has not established the necessary sustained national or international acclaim through extensive evidence.<sup>18</sup>

### III. CONCLUSION

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 to reopen is denied.

Cite as *Matter of A-K-B-*, ID# 18062 (AAO Aug. 29, 2016)

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<sup>17</sup> According to USCIS policy, general statements that any of the ten objective criteria do not readily apply to the foreign national's occupation are not probative and should be discounted. Similarly, statements that USCIS should accept witness letters as comparable evidence are not persuasive. A petitioner should explain why it has not submitted evidence that would satisfy at least three of the criteria set forth in 8 CFR 204.5(h)(3) as well as why the evidence it has submitted is "comparable" to that required under 8 CFR 204.5(h)(3). USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

<sup>18</sup> Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3).