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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-K-B-

DATE: FEB. 19, 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) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Nebraska Service Center, denied the petition. We dismissed her appeal, and subsequently reaffirmed that decision on motion. The matter is now before us on a second motion to reopen. The motion to reopen will be denied.

I. MOTION TO REOPEN

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The new facts, however, 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. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). If it is the Petitioner's position that she has new accomplishments that form the basis of her eligibility, a new petition is the appropriate venue to present those achievements. A motion to reconsider must include 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, as opposed to a motion to reopen which seeks a new hearing based on new material. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

In part three of her Form I-290B, Notice of Appeal or Motion, and the accompanying statement, the Petitioner indicated that she is filing a motion to reopen. She asserts that a September 2, 2015, letter from demonstrates that she now meets the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(viii) relating to participating as the judge of the work of others and performing in a leading or critical role. On motion, the Petitioner also resubmits letters from a licensed clinical psychologist; and , a part-time faculty member at the We had previously considered both letters when we dismissed the Petitioner's appeal and reaffirmed the dismissal in our motion adjudication.

The Petitioner has not shown that we should grant the instant motion to reopen. Specifically, the evidence does not establish the Petitioner's eligibility for the exclusive classification at the time she filed the petition in January 2014. As noted in our previous decisions and above, the Petitioner must demonstrate eligibility for the visa petition at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49. She cannot secure a priority date based on the anticipation of future events that might qualify her for a visa classification. *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.")

In his September 2015 letter, which the Petitioner submits for the first time on motion, provides that she is "a Site Administrator for Course Center," and that she "oversees, grades, and judges the work [*sic*] of students' work." The letter notes that the Petitioner "will help to oversee first Online Research Conference in March 2016, where the attendees will study the state of the art in contemporary dream research." Neither the letter nor any other evidence indicated that the Petitioner had judged others' work at the time of filing the petition in January 2014. The Petitioner had not asserted that she met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) when she initially filed her petition, on appeal, or in her first motion to us.

Moreover, conclusory statement is not supported by any evidence or details on the nature of her judging responsibilities, or confirmation that the students are in "the same or an allied field of specification for which classification is sought." *See* 8 C.F.R. § 204.5(h)(3)(iv). Repeating the language of the statute or regulations does not satisfy a petitioner's burden of proof. *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*, No. 95 Civ. 10729, 1997 WL 188942 at *1, 5 (S.D.N.Y. Apr. 18, 1997). Similarly, we need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990). Accordingly, neither letter nor any other documents in the record establishes that the Petitioner met this criterion at the time of filing in January 2014.

On motion, the Petitioner also asserts that she meets the critical and leading role criterion under 8 C.F.R. § 204.5(h)(3)(viii). affirms that the Petitioner "performs a critical role within as a Site Administrator for the online course center, which includes dream research methods, lucid dreaming, nightmare treatment, spirituality and dreams, and a variety of other dream-related topics based on books, conference presentations, and peer-reviewed journal papers." Although notes that the Petitioner's role is "critical," he does not provide specific evidence in support of the conclusory statement. The record lacks information showing that the Petitioner's impact on is so significant that her role constitutes a critical role for the organization as a whole. As noted in our two previous decisions, going on record without supporting documentation is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998).

Furthermore, as discussed in our two previous decisions, the Petitioner has not shown that [redacted] has a distinguished reputation, as required under the plain language of 8 C.F.R. § 204.5(h)(3)(viii). The record lacks evidence relating to this organization reputation or in support of a finding that it has a "distinguished reputation." *See Soffici*, 22 I&N Dec. at 165. Unsubstantiated statements do not establish that the Petitioner meets this criterion. *See Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *Avyr Associates, Inc.*, 1997 WL 188942 at *5.

In addition, as discussed above, the Petitioner must show her eligibility at the time she filed the petition in January 2014. The record does not indicate that she was an [redacted] site administrator in January 2014. As such, even if her role met the criterion under 8 C.F.R. § 204.5(h)(3)(viii), which as explained above it does not, she would not be eligible for the exclusive classification. The Petitioner may not rely on an event that postdates her filing date to establish her eligibility. *See* 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49; *Wing's Tea House*, 16 I&N Dec. at 160; *Izummi*, 22 I&N Dec. at 175-76. Accordingly, the Petitioner has not demonstrated that she met this criterion at the time of filing in January 2014.

Finally, on motion, the Petitioner maintains that letters from [redacted] constitute comparable evidence. The record does not support this assertion. The regulation provides that "[i]f the above standards [8 C.F.R. § 204.5(h)(3)(i)-(x)] do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." 8 C.F.R. § 204.5(h)(4). The Petitioner has not filed any documents indicating that the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) do not apply to her occupation as a "dream expert." Moreover, the Petitioner has not demonstrated or explained how the three letters are comparable to the objective achievements required under any of the ten criteria.[1] These letters stated in general terms that the Petitioner is an expert in her field, who has contributed to the field and "the life of many people." We considered [redacted] letters in our two previous decisions, concluding that they were insufficient to show the Petitioner's eligibility. On motion, the Petitioner has not specifically challenged our findings relating to these letters. In addition, as discussed above, [redacted] letter similarly does not prove the Petitioner's eligibility.

General, solicited letters from local colleagues are insufficient to demonstrate a petitioner's eligibility. *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. *Id.* Letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as our decisions have done, evaluate the content of those letters and whether they are corroborated to determine if they support the foreign national's eligibility. *See*

[1] General assertions that the ten objective criteria described in 8 CFR 204.5(h)(3) do not readily apply to the foreign national's occupation are not probative. Similarly, assertions that USCIS should accept witness letters as comparable evidence are not persuasive. Adjudicator's Field Manual (AFM), ch. 22.2(i)(1)(A) (comparable evidence segment).

id. at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field); AFM, ch. 22.2(i)(1)(D).

We have considered the materials the Petitioner filed on motion and find that she has not documented a one-time achievement (that is a major, internationally recognized award), or offered sufficient qualifying items that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), or comparable evidence confirming her eligibility. 8 C.F.R. § 204.5(h)(4). The Petitioner has not satisfied the initial evidentiary requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not demonstrated, through the submission of extensive evidence, the level of expertise required for the classification sought.[2]

II. CONCLUSION

The Petitioner has not shown that the motion to reopen should be granted, because she has not stated the new facts to be provided and be supported by affidavits or other documentation. *See* 8 C.F.R. § 103.5(a)(2). We have considered the evidence on motion and find that it does not establish the Petitioner's eligibility for the exclusive classification. Accordingly, the instant motion to reopen will be denied.[3]

The burden of proof in visa petition proceedings remains entirely with the Petitioner. 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. Accordingly, the motion will be denied.

ORDER: The motion to reopen is denied.

Cite as *Matter of A-K-B-*, ID# 15786 (AAO Feb. 19, 2016)

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[2] We maintain *de novo* review of all questions of fact and law. In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

[3] To the extent that the Petitioner is also seeking a motion to reconsider, she has not stated any valid reason for reconsideration, nor has she sufficiently supported any valid reason for reconsideration with pertinent legal precedent or other legal authority establishing that our August 12, 2015, decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, had the Petitioner filed a motion to reconsider, the motion would be denied.