



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF A-T-A-

DATE: JULY 11, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner seeks classification of the Beneficiary, a curator and historian of expressive realism art, as an individual of extraordinary ability in the arts. 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 of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which require documentation of a one-time achievement or evidence that meets at least three of the 10 regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). We dismissed the appeal, concluding that the Beneficiary had only met one of the required criteria.¹

The matter is now before us on a motion to reopen our previous decision. On motion, the Petitioner submits new evidence asserting that the Beneficiary meets four criteria at 8 C.F.R. § 204.5(h)(3) in addition to the judging criterion that had previously been established.

Upon *de novo* review, we will deny the motion to reopen.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). A petitioner can demonstrate a beneficiary’s one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Where a petitioner submits qualifying evidence that a beneficiary meets at least three criteria, we will determine whether the totality of the

¹ Our most recent decision in this matter is *Matter of A-T-A-*, ID# 737937 (AAO Dec. 19, 2017).

record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

Where a petitioner establishes that the beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a “new” fact, nor does it mirror the Board of Immigration Appeals’ (the Board) definition of “new” at 8 C.F.R. § 1003.23(b)(3) (stating that a motion to reopen will not be granted unless the evidence “was not available and could not have been discovered or presented at the former hearing”). Unlike the Board regulation, we do not require the evidence of a “new fact” to have been previously unavailable or undiscoverable. Instead, we interpret “new facts” to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute “new facts.” We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Beneficiary is a curator and historian of expressive realism art. In our previous decision, we held that the Beneficiary only met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner has filed a motion to reopen our previous decision. On motion, the Petitioner submits new evidence regarding the following criteria: membership at 8 C.F.R. § 204.5(h)(3)(ii), contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), display at 8 C.F.R. § 204.5(h)(3)(vii), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), which we will discuss below.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

In our previous decision we held that the Petitioner had not established that the Beneficiary’s membership in the [REDACTED] required outstanding achievements of its members as shown through documentation such as bylaws or admission standards. On motion, the Petitioner submits a translation of the Statutes of Association from [REDACTED] which begins by stating that its purpose is “the promotion of the visual art of expressive realism in Germany and Austria.” Section four of this document, pertaining to membership in the association, states, “Admission is requested by written application for membership” and that “[t]he

board decides on the admission” and “can appoint honorary members.” This document does not stipulate that the association requires outstanding achievements of its members.

The Petitioner states that the [REDACTED] selected the Beneficiary “to lead its effort to disseminate Expressive Realism paintings from Mr. Heirling’s personal collection.” The Petitioner states that “this constitutes a merit-based association of very small membership,” but has not established that this meets the requirements of the regulation, which refers to an association in the field which requires outstanding achievements of its members. The record does not demonstrate that the selection of the Beneficiary to disseminate paintings from the Hierling Foundation equates to membership in an association or that such membership requires outstanding achievements to join the association. Therefore, the Beneficiary does not meet this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner asserts that the Beneficiary’s contribution of filling the gap in expressive realism artwork in the United States is a contribution of major significance. On motion, the Petitioner submits several letters attesting to the gap of expressive realism in the United States from individuals who identify themselves as art experts, but the record does not contain additional evidence of their credentials to substantiate their level of expertise.

The Petitioner also submits a printout of the exhibit text associated with the painting [REDACTED] by [REDACTED] from the [REDACTED] website, written by [REDACTED] to highlight what expressive realism is and to demonstrate that this artwork is largely underrepresented, stating that there is an “incomplete view on the creative work of the 20th century.” The Petitioner claims that the Beneficiary’s expertise in facilitating the donation of art from the [REDACTED] collection to [REDACTED] constitutes an original contribution of major significance in the field. The Petitioner contends that we misinterpreted a statement from [REDACTED] from [REDACTED] that the artists from the Hierling collection would “complement” the holdings of the museum, which we interpreted to mean that these museums already had expressive realism artwork. The Petitioner notes that the focus of this statement that these paintings “would strongly complement [the museum’s] holdings and allow a more nuanced view of the art from the interwar period” meant that the donation will “cover a more nuanced view of the art,” which “view presently is missing from the museum.” The Petitioner asserts that even if [REDACTED] museums had certain works of expressive realism, they do not have sufficient works to fully express this period in context, which it contends is of utmost significance for reputable museums. Accordingly, the Petitioner states that filling the gap “between Expressionism, [REDACTED] and the postwar period can’t be anything else but of major significance to the field.” Here, we find the Petitioner conflates the gift of the art from the [REDACTED] collection with the Beneficiary’s own contribution of “facilitating” the transfer. The [REDACTED] letter focuses on the importance of the gift, not the Beneficiary’s role. Additionally, we find that this refers to prospective contributions that may be of major significance in the field. The regulation requires evidence of the Beneficiary’s original contributions that already have occurred.

The Petitioner states that the Beneficiary already has donated underrepresented artwork in 2010. Specifically, the Petitioner submits a letter from [REDACTED] the Mayor of [REDACTED] stating that the Beneficiary has donated underrepresented art to the city of [REDACTED] and the former Mayor of [REDACTED]. The Petitioner has not demonstrated how this donation equates to a contribution of major significance.

The Petitioner further states that the Beneficiary has already undertaken the selection of the artworks to be donated and has become Head of the donation and founder of the [REDACTED] as shown by the Letter of Appointment from [REDACTED] submitted previously. However, the Petitioner has not provided any additional evidence on motion to establish that the Beneficiary's contributions, rather than the gifted artworks from the [REDACTED] collection, have been of major significance in the field.

The Petitioner also states that the fact that the Beneficiary has not donated the artwork from the [REDACTED] collection to other museums that have expressed interest in the artwork constitutes a contribution of major significance because the Beneficiary had to fight to save the works for donation to the United States to fill the gap in expressive realism here. The Petitioner has not provided any new evidence to support this assertion on motion. Therefore, the evidence in the record does not demonstrate that the Beneficiary meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

On motion, the Petitioner submits letters from two individuals who had their first shows at [REDACTED] and state that this is the art gallery the Beneficiary founded and co-owns. These letters state that the Beneficiary curated and exhibited paintings in addition to mentoring young artists and that her gallery concept is innovative for young artists.² We find that these letters demonstrate the Beneficiary's role as co-owner of an art gallery and of her ability to mentor young artists, but the Petitioner has not established how this constitutes a display of the Beneficiary's work in the field. The record does not contain evidence demonstrating what works the Beneficiary exhibited or that her work was on display. Therefore, the Beneficiary does not meet this criterion.

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).

A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Beneficiary's impact on the organization or the establishment's activities. The Beneficiary's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

² These letters refer to gallerists, but the record does not establish how that role relates to the Beneficiary's fields of curatorship and art history.

The Petitioner submits a translation from the [REDACTED] website, indicating that the Beneficiary is one of the board members, and she also submitted the translation of the heading from an email to [REDACTED] from an attorney, addressing the Beneficiary as a director. The record does not contain any documentation of the organizational hierarchy of these entities or evidence about the Beneficiary's duties as a member of the board for [REDACTED] or as a director of [REDACTED]. Additionally, the record does not contain evidence regarding the reputation of these entities. We find that these letters are insufficient to demonstrate that the Beneficiary performed in a leading or critical role for an organization with a distinguished reputation. Therefore, the Beneficiary does not meet this criterion.

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III. CONCLUSION

The motion to reopen is denied because the evidence the Petitioner has submitted does not constitute the required initial evidence of either a qualifying one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the Beneficiary's acclaim and recognition required for the classification sought.

ORDER: The motion to reopen is denied.

Cite as *Matter of A-T-A-*, ID# 1383945 (AAO July 11, 2018)