



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

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

MATTER OF B-L-

DATE: JULY 24, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an artist, seeks classification as an alien of extraordinary ability. *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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner submitted evidence of a one-time achievement or documents that meet at least three of the ten evidentiary criteria. The Petitioner appealed the matter to us. We withdrew the Director's decision, remanding the matter for further consideration and entry of a new decision which, if adverse, should be certified to us for review. After the Director then issued an identical decision, the Petitioner appealed a second time, and we again withdrew the Director's decision and remanded the matter for issuance of a new decision. The Director subsequently issued a third denial and certified that decision to us. In our certification decision, we affirmed the Director's decision denying the petition.

On motion, the Petitioner submits additional evidence and asserts that he meets at least three of the ten required evidentiary criteria, and that his work has garnered sustained national or international acclaim.

Upon review, we will deny both motions.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Director's third decision found that the Petitioner did not meet any of the four evidentiary criteria that he claimed: published material about him in professional or major media, original contributions of major significance, author of scholarly articles, and display of his work at artistic exhibitions or showcases. In our certification decision, we agreed with the Director that the evidence did not establish that the Petitioner meets the contributions criterion, but we did find that qualifying evidence had been submitted under the published material in media¹ and display criteria. While the Petitioner did not claim eligibility under the authorship criterion in his brief, we noted that the evidence did not establish that the Petitioner had written a scholarly article. On motion, the Petitioner submits additional evidence, and refers to previously submitted evidence, under the display criterion. He also submits four new letters from fellow artists to support his claim to original contributions of major significance to the field of art.

A. Motion to Reconsider

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). It also must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

The Petitioner asserts that, should we find that he meets at least three of the evidentiary criteria under this classification, application of the "preponderance of the evidence" evidentiary standard in *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) should lead to a finding that he possesses the requisite national or international acclaim. He references our statement in the conclusion section of our decision, in which we state that one example of a missing indicator which would set him apart from others in his field is substantial press reporting, and indicates that such evidence already exists in the record. However, it must first be noted that this was only an example of possible qualifying evidence, and it was stated in the context of a hypothetical final merits determination. As will be further addressed in the next section, the Petitioner has not submitted evidence to establish that he satisfies at least three criteria. Second, as acknowledged in our previous decision, the Petitioner has submitted evidence of approximately a dozen publications which portray his work, but most of that evidence does not amount to media coverage about him and his work which would qualify under the media criterion. While all evidence of record is considered in a final merits determination, the evidentiary weight of media materials which depict his work with little or no comment among that of

¹ On motion the Petitioner indicates that he believes that he meets the criterion under 8 C.F.R. § 204.5(h)(3)(iii) relating to published material about him in media. Since we held that he met this criterion in our previous decision, and the Petitioner does not claim any incorrect application of law or policy regarding this criterion in his brief, we will not address this criterion in our decision. Had the Petitioner established that he meets the requisite three criteria, we would have evaluated all of the evidence submitted, including that highlighted by the Petitioner in his brief, in conducting a final merits determination of his eligibility as an individual of extraordinary ability.

many other artists is significantly less than the interview that appeared in [REDACTED]

The Petitioner further asserts that the evidence submitted about the book [REDACTED] shows his work and illustrates his impact on the field under the contributions of major significance criterion. However, he does not identify a pertinent precedent or adopted decision, or statutory or regulatory provision that would establish that our decision regarding this criterion was based upon the incorrect application of law or policy.

B. Motion to Reopen

The Petitioner has submitted four new reference letters from his fellow artists, and asserts that they constitute evidence of his contributions to the art world which have been widely recognized². All of the writers indicate that they are aware of the Petitioner's work, first as a leading member of the [REDACTED] art movement in China, and later in his career in performance art. While other evidence in the record supports these writers' statements regarding his early work, they do not identify a specific contribution he made during this period. For example, after briefly summarizing the Petitioner's career, [REDACTED] simply states that the Petitioner "has played a leadership position and has made an impact in his field." [REDACTED] and [REDACTED] identify specific performance art works done by the Petitioner in the latter portion of his career, but they do not indicate their impact on the field. As stated in our previous decision, reference letters that do not provide specifics regarding the Petitioner's contributions and their impact on others in the field are insufficient to establish eligibility under the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(v).

III. CONCLUSION

The assertions made by the Petitioner on motion do not establish that our previous decision was grounded in an incorrect application of law or policy. In addition, the new evidence submitted on motion does not overcome the grounds underlying our previous decision or demonstrate his eligibility for this classification.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of B-L-*, ID# 1320289 (AAO July 24, 2018)

² The Petitioner also submitted new evidence relating to the published material in media criterion, but as noted in footnote 1, we found that he satisfied this criterion in our previous decision. Again, had the Petitioner established that he meets the requisite three criteria, we would have considered this new evidence in a final merits determination.