



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

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

MATTER OF I-O-

DATE: JULY 31, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a dancer and choreographer, seeks classification as an individual 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 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 summarily dismissed the appeal, concluding that the Petitioner had not identified specifically any erroneous conclusion of law or statement of fact for the appeal.<sup>1</sup>

The matter is now before us on a motion to reopen and reconsider our previous decision. On motion, the Petitioner asserts that the evidence in the record demonstrates that she meets the awards and published material criteria in addition to the judging and display criteria as determined by the Director.

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

## 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 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 under at least three

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<sup>1</sup> Our most recent decision in this matter is *Matter of I-O-*, ID# 931085 (AAO Dec. 26, 2017). On motion, the Petitioner has submitted evidence demonstrating that the brief did not arrive due to circumstances beyond her control.

criteria, we will determine whether the totality of 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.

Where a petitioner 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); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

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

## II. ANALYSIS

### 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).

A motion to reconsider 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 does not contend that our previous decision was based on an incorrect application of USCIS law or policy as required for a motion to reconsider. Therefore, this motion is denied.

### B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner has submitted documentary evidence that was not submitted previously, which we will discuss below.

The record reflects that the Petitioner is a dancer and choreographer. As she has not established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director held that the Petitioner only met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). On motion, the Petitioner asserts that she also meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). For the reasons discussed below, the record does not support a finding that the Petitioner satisfies at least three criteria.

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Director held that the Petitioner has not established that the prizes or awards referenced in the record were given for excellence in the field of endeavor or that they are nationally or internationally recognized. On appeal, the Petitioner presents additional evidence to demonstrate the significance of the festivals and competitions she participated in as part of the [REDACTED] dance ensemble, for whom she has been a choreographer since 2007.<sup>2</sup> We will address this specific evidence below together with the evidence of the awards received.

The Petitioner has submitted a number of translations for articles or information relating to the competitions in which the [REDACTED] group performed or competed. However, the record lacks the original foreign language documents for much of this evidence. Rather, it primarily contains transcriptions of the original material. Without the original documents, we cannot assess the accuracy of the translated material and determine if it supports the Petitioner's claims.

The record also contains several documents, some translated, that do not identify their sources. For example, the Petitioner provides a typed document about the [REDACTED] in Syria. While the record contains a photograph of a plaque from the [REDACTED] in 2003, it is unclear if this constitutes an award for excellence, and the Petitioner has not submitted evidence demonstrating that this is a nationally or internationally recognized award.

Where the original source material has been submitted, the evidence does not establish eligibility under this criterion. The Petitioner submitted the rules related to the [REDACTED] and a participation certificate, indicating the ensemble's performance. However, the record does not demonstrate that this equates to an award for excellence in the fields of dance and choreography.

Other evidence the Petitioner provides includes a web article about the [REDACTED] stating that this festival "includes not only the featured international performers, but also dozens of [REDACTED] and [REDACTED] metropolitan area arts

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<sup>2</sup> The record contains a letter from [REDACTED], the Assistant Professor of the Stage Direction and Choreography at [REDACTED] stating that the Petitioner became a choreographer at [REDACTED] in 2007.

organizations,” including over 400 performing and visual artists “representing a diverse range of art forms, genres, and cultures.” The record contains photographs of the children and a tour schedule for [REDACTED] ensemble relating to the performances at the [REDACTED] stage in [REDACTED] Virginia in 1999. It also includes a photograph of a medal from the [REDACTED] but it is unclear what significance this has. The Petitioner does not establish that this medal or the ensemble’s performance at the festival constitutes a nationally or internationally recognized award for excellence in the field.

The record contains a certificate showing that the [REDACTED] ensemble won first place in the folk dance category for children aged 10 to 13 at the [REDACTED]. While the certificate is properly translated, the record lacks the original material describing the competition or other evidence describing its significance. Thus, the Petitioner has not established that this document represents a nationally or internationally recognized award for excellence in choreography.

In addition, while we acknowledge the evidence in the record of the Petitioner’s receipt of a gift from the [REDACTED] the evidence submitted does not indicate how this constitutes a nationally or internationally recognized award for excellence in the field. For the reasons stated above, the Petitioner has not established eligibility under this criterion.

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).*

The Director found that the Petitioner met this criterion. The evidence in the record reflects that the Petitioner served on a panel judging the children’s dance competition, [REDACTED]. We find that the Petitioner meets this criterion.

*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. 8 C.F.R. § 204.5(h)(3)(iii).*

The Director discussed the evidence submitted from the [REDACTED] and [REDACTED] Newspapers and held that the Petitioner had not shown that this material was published in professional or major trade publications or other major media.

We note that the article published in the [REDACTED] Newspaper entitled, [REDACTED] chatter at the [REDACTED] discusses the background of the ensemble and indicates that the Petitioner joined as a participant when she was 3 1/2 years old and is now a teacher for the ensemble. In the [REDACTED] Newspaper, an article lists the Petitioner’s name in the title with a subtitle, [REDACTED] and focuses on the Petitioner’s role as a choreographer-ballet master whereas another article in this newspaper entitled, [REDACTED] discusses the ensemble and

quotes the Petitioner as praising its popularity in the Ukraine, France, Tunisia, and the United States. While we find that these articles are about the Petitioner and relate to her work in the field, the record does not contain evidence demonstrating that they equate to professional or major trade publications or other major media to meet the requirements of this criterion.

A document published in 1999 by the [REDACTED] entitled, [REDACTED] features several performing groups including [REDACTED]. We acknowledge that the Petitioner was a performer with this group during that time, but this article does not constitute published material about her individually. The regulation specifies that this material must be about the petitioner and her work in the field. In addition, the record does not contain evidence demonstrating that this is a professional or major trade publication or other major media.

The Petitioner submits five letters from individuals who have worked closely with the Petitioner, attesting to her creative abilities as a choreographer and dancer, her influence as an instructor, and her participation in international competitions and festivals, but these letters do not discuss published material about the Petitioner. Therefore, the record does not establish that the Petitioner 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).

The Director found that the Petitioner met this criterion. We agree, as the record reflects that she has performed as a member of the [REDACTED] ensemble at many artistic exhibitions in which her artistic abilities as a dancer were on display.

### III. CONCLUSION

The motion to reconsider is denied as the Petitioner has not asserted that our prior decision was based on an incorrect application of law or policy. 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 the level of expertise required for the classification sought.

**ORDER:** The motion to reconsider is denied.

**FURTHER ORDER:** The motion to reopen is denied.

Cite as *Matter of I-O-*, ID# 1384339 (AAO July 31, 2018)