



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

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

MATTER OF A-T-A-

DATE: FEB. 21, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a tennis academy, seeks to classify the Beneficiary as an individual of extraordinary ability in the arts as “a curator and historian of Expressive Realism Art.”<sup>1</sup> *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. We affirmed the Director’s denial, concluding that the Petitioner had satisfied the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv), but not at least three of the ten criteria listed in 8 C.F.R. § 204.5(h)(3)(i)-(x), as required. We subsequently denied the Petitioner’s motion to reopen the matter.

The Petitioner has now filed its second motion, a motion to reconsider the matter. It asserts that we erred in our previous decision, and claims that it has presented evidence satisfying five additional criteria under 8 C.F.R. § 204.5(h)(3)(ii), (v), (vi), (vii) and (viii). Upon review, we will deny the Petitioner’s second motion.

## I. LAW

A motion to reconsider must establish that our previous 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). Moreover, 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 (DHS). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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<sup>1</sup> The Petitioner initially offered the Beneficiary a “Business Development & Sales M[anagement]t” position, but then withdrew the offer, claiming that it had mistakenly thought that a job offer was required to classify her as an individual of extraordinary ability.

In addition, the regulation specifies motion filing requirements, providing that a petitioner must submit “a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding.” 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) requires that “[a] motion that does not meet applicable requirements shall be dismissed.”

## II. ANALYSIS

The Petitioner has not submitted “a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding.” It therefore has not met the motion filing requirements. See 8 C.F.R. § 103.5(a)(1)(iii)(C); 8 C.F.R. § 103.5(a)(4). In the alternative, for the reasons we will discuss below, the Petitioner has not shown that we should grant its motion to reconsider the matter.

As explained in our decision dismissing the appeal, the Petitioner has shown the Beneficiary’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.” It has therefore satisfied the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner, however, has not established that we erred in our most recent decision denying its motion, concluding that it has failed to satisfy two additional criteria.<sup>2</sup>

*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).

On motion, the Petitioner claims that the Beneficiary’s membership in the [REDACTED], her appointment to be the head of the association’s [REDACTED] Donation Department, and her selection to handle art donations for the [REDACTED] satisfy the membership criterion. The Petitioner advanced the same arguments on appeal and in support of its previously filed motion. We addressed these arguments as well as the relevant evidence in our two decisions, one dismissing the appeal, and the other denying the motion. Specifically, we explained in our motion decision that while [REDACTED] has certain membership requirements – including requiring candidates to submit written applications that are then evaluated by the board – the documentation in the record does not confirm that the association requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. The record lacks credible evidence on how the board evaluates candidates or that demonstrates the assessment is completed by recognized national or international experts.

Moreover, as discussed in our motion decision, the Petitioner has not shown that the Beneficiary’s appointments, which might illustrate her ability to carry out certain professional obligations, constitute

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<sup>2</sup> The Petitioner has not alleged, and the record does not demonstrate, that the Beneficiary has received a major, internationally recognized award. See 8 C.F.R. § 204.5(h)(3). As such, it must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to satisfy the initial evidence requirements.

her membership in qualifying associations. See 8 C.F.R. § 204.5(h)(3)(ii). On motion, the Petitioner has not pointed to any pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or DHS in support of its position that professional appointments qualify as membership in associations. As such, it has not established that we erred in our findings as relating to 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 argues on motion, as it did on appeal and in support of its previously filed motion, that the Beneficiary has made original contributions of major significance in the field based on her role in facilitating the donation of underrepresented art work to public and educational institutions. One reference letter indicates that her work has “allow[ed] a more nuanced view of the art from the interwar period.” While reference letters in the record voice the authors’ appreciation for the Beneficiary’s effort in closing the gap in expressive realism art in U.S. museums, the Petitioner has not demonstrated that her actions rise to the level of contributions of major significance in the field, such that they have remarkably impacted or influenced the field, or that her work is original, such that she was the first person or one of the first people to have helped in closing the gap in a particular area of art.

To satisfy this criterion, the Petitioner must establish that not only has the Beneficiary made original contributions but that they have been of major significance in the field. Not all contributions are qualifying. Rather, a petitioner must offer documentation confirming that the contributions are of major significance. Major significance in the field may be shown through evidence, such as major media profiling or reporting, verifying that a beneficiary’s work has been widely praised and recognized throughout the field. Reference letters, such as those in the record, that lack specifics and simply use hyperbolic language do not add value and do not show that the Beneficiary meets this criterion. See 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 8-9* (Dec. 22, 2010), <http://www.uscis.gov/laws/policy-memoranda>. For example, the one-sentence letter from art historian and exhibition curator [REDACTED] indicating that “there is a gap in [REDACTED] in the US museums and that closing this gap is of major significance to the field,” does not demonstrate that the Beneficiary meets this criterion, as the record does not substantiate the conclusory statement. On motion, the Petitioner has not presented any legal authority establishing that we erred in our findings as relating to this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

On motion, the Petitioner states that the Beneficiary’s one-page article about [REDACTED], an artist, published in *Game Over* satisfies this criterion.<sup>3</sup> It contends that *Game Over* is “an art catalog” and that “by definition . . . [it] is a professional publication in the field of art.” It also claims that the

<sup>3</sup> While we neglected to discuss this criterion in our motion decision, we had explained our reasons for concluding that the Petitioner did not meet this criterion in our decision dismissing the appeal.

publication “cannot be considered anything less than a major trade publication as its only purpose is to present and promote art.” The Petitioner has not pointed to any evidence in the record confirming that the publication is “an art catalog” that qualifies as a professional or major trade publication. Its statements that the record does not substantiate are insufficient to show that it satisfies this criterion.

Regardless, the Petitioner has not established that the article is scholarly. “In general, [a scholarly article] should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.” See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9. In contrast, the Beneficiary’s article is written as a one-page letter to [REDACTED] with a photograph of his art installation, but does not include other elements commonly found in scholarly articles. The Petitioner has not demonstrated that this writing qualifies as a scholarly article. Based on these reasons, the Petitioner has not satisfied the 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 Petitioner acknowledges on motion, as it did previously, that the Beneficiary is not a painter or an artist, but claims that she satisfies this criterion because she was a “book coordinator” for [REDACTED] and served as a curator for exhibits in the gallery she owned. The field in which the Beneficiary claims extraordinary ability is expressive realism art. The Petitioner, however, has not established that her duties as a book coordinator and curator relates to her work in that specific field.

Moreover, although the editor of [REDACTED] thanked the Beneficiary for “coordinating this wonderful book,” he did not explain what she did specifically. On motion, the Petitioner claims that her duties included “edit[ing] all elements of the book for style, substance, and organization,” “review[ing] the layout,” and “oversee[ing] all aspects of production.” The record, however, lacks sufficient evidence, such as statements from the author and editor, to support these assertions. As such, the Petitioner has not shown that we erred in our determination as relating to this issue.

Furthermore, although the Petitioner has offered two 2018 letters from artists who had displayed their work in the Beneficiary’s gallery, these letters are insufficient to confirm that she meets this criterion. The letters contain verbatim passages relating to the Beneficiary’s responsibilities as a gallery owner. The identical wordings lead us to question if the letters credibly reflect the authors’ independent observations. See *Ye v. U.S. Dep’t of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (stating that nearly identical language in separate asylum affidavits may support an adverse credibility finding). Regardless, the letters provide that the Beneficiary “personally invited, curated, exhibited, and mentored . . . talented young artists,” but do not specifically explain what she did or otherwise demonstrate that her activities associated with being a gallery owner constitute the display of her work in the field of expressive realism art at artistic exhibitions or showcases. As such, the Petitioner has not shown that we erred in concluding that 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).

The Petitioner maintains that the Beneficiary satisfies this criterion because she has performed in a leading or critical role for the [REDACTED] which hired her to facilitate its donation of artwork to [REDACTED] one of the three [REDACTED]. According to a letter from the owner of the foundation, he authorized the Beneficiary to donate a part of his collection to a U.S. institution of her choice to present the art to the American public.

To establish a leading role, the evidence must show that the foreign national is or was a leader. A title, with appropriate matching duties, can help to demonstrate if a role is or was, in fact, leading. *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10. Here, the record, including the letter from the foundation's owner, does not show that the Beneficiary has led the foundation. Similarly, although the Beneficiary has been entrusted to facilitate the donation of artwork, the evidence is insufficient to demonstrate that she has performed in a critical role, such that she has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. *Id.* The Petitioner has offered limited information on the foundation's activities besides donating pieces from its collection. Furthermore, the record, while verifies the foundation's donations, does not include sufficient documentation establishing that it has a distinguished reputation, as required under the regulation. As such, the Petitioner has not shown that we erred in concluding the Beneficiary does not meet this criterion.

### III. CONCLUSION

The Petitioner's motion to reconsider the matter will be denied because it does not meet the motion filing requirements. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C), (a)(4). In the alternative, the motion will be denied because it does not establish that our previous decision was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3).

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

Cite as *Matter of A-T-A-*, ID# 2060602 (AAO Feb. 21, 2019)