



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

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

MATTER OF E-R-K-

DATE: SEPT. 5, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a legal scholar, 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 Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner met any of the ten initial evidentiary criteria, of which at least three are required. On appeal, we found that the Petitioner's receipt of an Honorable Mention from the [redacted] in 2010 met the criterion for lesser nationally or internationally recognized prizes or awards, but that he did not meet any of the other evidentiary criteria.¹

On motion, the Petitioner submits additional evidence and asserts that he meets three additional evidentiary criteria.

Upon review, we will deny the motion.

I. LAW

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). We do not consider new facts or evidence in a motion to reconsider.

II. ANALYSIS

The Petitioner asserts in his brief on motion that he meets an additional three criteria, and submits three new reference letters in support of these claims. However, as noted above, we do not consider new facts or evidence in a motion to reconsider. We will therefore focus on the Petitioner's brief and his assertions regarding the incorrect application of law or policy.

¹ *Matter of E-R-K-*, ID# 1758010 (AAO Nov. 29, 2018)

A. Documentation of the Individual'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

The Petitioner bases his claim to this criterion on his membership in the [redacted] [redacted] Our previous decision acknowledged the reference letter from [redacted] [redacted] who confirms that the Petitioner was nominated and appointed as a member, and later chairman, of the "Special Committee of Informatics and Statistics." As we noted, this letter demonstrates that, as President of the [redacted], he exercised his authority to appoint the Petitioner to this position, after his nomination by legal experts, but does not establish that outstanding achievements are required for members of this organization or any of its committees.

On motion, the Petitioner asserts that "membership in this association is exclusive, meaning that it is limited solely to those who have been judged by recognized experts as having attained outstanding achievements in the field." However, membership exclusivity can be achieved by any number of factors, including education and a certain number of years of experience, which are not qualifying under the terms of this criterion. Regarding the specific selection of the Petitioner as an [redacted] member, [redacted]'s letter indicates that it was based upon his work in the development of and training for [redacted] a digital judicial processing system, as a member of the state of [redacted] chapter of the [redacted]. But neither the letter nor other evidence relating to the [redacted] demonstrates that as a requirement in all cases, members are nominated, vetted and selected based upon their accomplishment of outstanding achievements, as opposed to other factors. Accordingly, the Petitioner has not established that our previous decision regarding this criterion was incorrect.

B. Evidence of the Individual's Original Scientific, Scholarly, Artistic, Athletic or Business-Related Contributions of Major Significance in the Field

The Petitioner identifies several accomplishments that he asserts are original contributions to the field, including his authorship of a book, [redacted] and his part in the development and deployment of an electronic judicial process system that the record indicates has now been adopted by the majority of courts in Brazil. We noted in our previous decision that several reference letters in the record describe the contents of the book and refer to it as a "very useful guide," "a significant book," and as a first of its kind in Brazil, but that they do not include sufficient detail to demonstrate its impact on the overall field.

On motion, the Petitioner argues that the fact that he received what we acknowledged as a nationally recognized award for his work in this area, one year after publication of the book, is a testament to the contribution that it made to the field that we should recognize under this criterion. However, in determining that the Petitioner's award met that criterion, we considered only the requirements of that criterion: that the award received by the Petitioner was in his field of expertise, was awarded for excellence, and that it received national or international recognition. Unlike a one-time achievement as shown by receipt of a major, internationally recognized award, that criterion is not sufficient by itself to establish qualification as an individual of extraordinary ability, but must be combined with

two more criteria in order to establish initial eligibility. Therefore, our analysis of the major significance of the Petitioner's original contribution is independent of our analysis under other criteria, and may be shown by widespread implementation in the field, impact or influence on others in the field, or similar indicia of its major significance.

The Petitioner also asserts that his work "brought about a national change in the administrative aspects of the legal and judicial processes" in Brazil, and refers to two new reference letters submitted with his motion. However, as noted above, we do not consider new evidence in a motion to reconsider. He does not assert that our determination that the previously submitted reference letters lack sufficient detail as to the extent or his impact of his contributions, and that they are not supported by sufficient documentary evidence, was an incorrect application of law or policy.

C. Evidence that the Individual has Performed in a Leading or Critical Role for Organizations or Establishments That Have a Distinguished Reputation

In our previous decision, we found that the evidence regarding the Petitioner's role as vice president, and later chairman, of [redacted] did not establish that these were either leading or critical for [redacted]. The Petitioner provides dictionary definitions of these position titles in his motion brief, and asserts that the reference letter from [redacted] provided sufficient detail about his duties in those roles to establish that they were leading. While the Petitioner correctly cites USCIS policy which states that a position title can help in determining whether that position was a leading one, title alone is not sufficient to meet this requirement. [redacted]'s letter explains that the Petitioner led the commission, worked with the judiciary in developing the "Electronic Judicial Process" and related educational materials, and represented the [redacted] to the press in commission matters. In describing his duties as vice president of the commission, the letter adds that he "ministered dozens of lectures and courses on the subject." This evidence demonstrates that as chairman, the Petitioner played a leading role for the commission, directing its members and representing its interests when working with other entities. But it does not establish that he led or directed [redacted] members outside of the commission, or engaged other entities on behalf of the entire [redacted] the organization or establishment in question. Therefore, the Petitioner has not established that our previous decision was incorrect based upon the record of proceedings at the time of the decision.

III. CONCLUSION

The Petitioner has submitted additional reference letters, but we do not consider such new evidence in a motion to reconsider. In addition, we find that the description of his duties found in a previously submitted reference letter does not establish that he played a leading role for [redacted] but that his leadership was limited to a single committee or commission within that organization. For these reasons, the Petitioner has not established that our previous decision was an incorrect application of law or policy, or incorrect based upon the records of proceedings at the time of the decision.

Matter of E-R-K-

ORDER: The motion to reconsider is denied.

Cite as *Matter of E-R-K-*, ID# 3986973 (AAO Sept. 5, 2019)