U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8895180

Date: AUG. 25, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a makeup 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director then affirmed this decision on motion, finding that the Petitioner met only two of the evidentiary criteria. On appeal, we agreed with the Director's finding that the Petitioner had served as a judge of the work of others in her field per the criterion at 8 C.F.R. § 204.5(h)(3)(iv). However, we disagreed that the Petitioner had established that published material about her and her work had appeared in professional or major trade publications or other major media, and withdrew the Director's positive finding regarding the criterion at 8 C.F.R. § 204.5(h)(3)(iii). We also found that the evidence established that the Petitioner met a second criterion by submitting evidence of the display of her work at artistic exhibitions per 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner now submits a combined motion to reopen and reconsider, together with new evidence, and asserts that she meets five criteria in addition to the two we found that she met in our previous decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss both motions.

I. LAW

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). Here, the Petitioner asserts that we misapplied the preponderance of the evidence standard, and that the previously submitted evidence established that she meets five additional criteria. We will discuss her assertions regarding each below.[1]

> 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)

In our previous decision, we acknowledged that the Petitioner had received three certificates from the [redacted], including a "Prestige Diploma" at the [redacted] Europe Cup in 2015, a "Diplome D'Honneur" at [redacted] in 2010, and a "Gold Medal" in "Ladies Juniors [redacted]" at [redacted] in 2008. But we noted that the [redacted] Competition Guidebook for 2018 indicates that all competitors are awarded the "Prestige Diploma," and that there was no information regarding the "Diplome D'Honneur" certificate in this evidence or elsewhere in the record. Thus the record did not establish that they were given to the Petitioner for "excellence in the field of endeavor," as a certificate for participation in a competition does not demonstrate that she excelled or stood out in any way amongst the competitors. Similarly, we noted that the Petitioner's "Gold Medal" certificate was issued in the junior ladies division, and that the evidence did not show that as such it was awarded for excellence amongst all of the competitors at [redacted] 2008. The Petitioner does not address the requirement for "excellence in the field of endeavor" in her motion brief, and thus has not established that our decision was incorrect based on the record of proceedings at the time of the decision.

However, even if the Petitioner had shown that the [redacted] certificates were awarded for excellence as a makeup artist, we also found in our previous decision that the evidence did not establish that they are nationally or internationally recognized awards. The Petitioner does address this element of the criterion on motion, stating that our finding that the evidence, including reference letters and published media about [redacted]'s competitions, relates to [redacted]'s competitions rather than the bestowed awards, "is simply incorrect." She references evidence from [redacted] itself, including a letter from the president of the organization, as well as articles published on independent websites and other media.

A review of the three articles which the Petitioner focuses on reveals that although there is discussion of the granting of awards at [redacted] competitions, all focus on the hair styling aspect of the competition and awards, and not the junior [redacted] competition for which the Petitioner was awarded. The article posted on the website of Modern Salon on [redacted] 2014 is a brief overview of

[1] The Petitioner does not contest the findings in our previous decision regarding the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(vi). We will therefore consider this issue to be waived. See, e.g., Matter of M-A-S-, 24 I&N Dec. 762, 767 n. 2 (BIA 2009).

the [redacted] competition that year in [redacted] Germany, and notes that it "brings together thousands of hairdressers from across the globe to compete for the coveted trophy (and the publicity, exposure and bragging rights that come along with it!)." It goes on to note that [redacted] is one of the 38 categories in which competitors participate, but does not provide further discussion of it, instead focusing on an interview of a hairdresser on the team representing the United States. Another article, posted on the website globalnews.ca, is an interview of two stylists from [redacted] Canada preparing for [redacted] 2017 in [redacted] The article notes that it is "the world's biggest hair competition," and one of the stylists explains that it "is like the [redacted]." By far the longest article was posted on the website racked.com, and goes into great detail regarding the history and current status of hair styling competitions, as well as the 2016 [redacted] competition in [redacted] South Korea. But it doesn't mention either the [redacted] competition or the junior competitions at all. Upon review, although we agree that these materials describe both the [redacted] competitions and the hair styling awards granted as being recognized internationally, none of them similarly describe the junior division award in [redacted] received by the Petitioner.

In addition, the letter from [redacted] President of [redacted] includes much of the same information presented in the articles analyzed above regarding the prestige of the [redacted] competition, and confirms the Petitioner's receipt of the three certificates in the record. However, this evidence does not establish that the awards received by the Petitioner are recognized outside of the issuing organization on a national or international basis.

For all of the reasons stated above, the Petitioner has not established that our previous decision regarding this criterion was incorrect based on the evidence in the record at the time of the decision.

> 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)

The Petitioner asserts in her brief that the evidence regarding her membership in the Union of Hairdressers and Cosmetologists of Russia (UHCR) establishes that she meets this criterion, and that in our previous decision we "enforce[ed] a heavier standard beyond what is required" by regulation or in agency guidance. Although she indicates a reference to the organization's bylaws, the Petitioner quotes a different set of membership criteria from its website, which states that a candidate for membership shall have:

- A relevant professional education;
- 3+ years of experience of occupational work;
- Awards, diplomas, medals for participation in various professional events.

We first note that the first two requirements are of the type which is noted in the guidance in the Adjudicator's Field Manual, referenced by the Petitioner, as not leading to a conclusion that an

association requires outstanding achievements of its members.[2] The third requirement partially suggests that "awards" or "medals" are also required, but also includes "diplomas," which are typically earned upon completion of education or training. In addition, "participation in various professional events" does not indicate that the preceding types of recognition must have been received for achieving victory in a competition or other venue in which the candidate would have demonstrated that they stand out from others in the field of cosmetology. Rather, a "professional event" could also include a seminar or conference in which the candidate participated and received a diploma documenting that participation. Therefore, this evidence does not establish that UHCR requires outstanding achievements of its members.

As for the UHCR bylaws, a review of the translations provided shows that they are not complete translations of the Russian language document. We first note that despite the Russian document including 22 articles, only a portion of Article 7, regarding admission of members, was provided in the English translation. More importantly, the translated portion of Article 7 is also not complete, as can be clearly seen by comparing the length of the sentences in the translation against the original document, and by the fact that in the translation, the second bullet under Article 7.2 is an incomplete sentence which abruptly ends with the word "the." Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. Id. Because the Petitioner did not submit a complete English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

The Petitioner also asserts that a reference letter regarding UHCR membership requirements did not contain inconsistencies with the website information or bylaws, but was submitted to provide further detail. Upon review, we agree that the use of the term "major" in the letter from [redacted] to describe contests is not necessarily inconsistent with the terminology used in the bylaws. However, we note that review of this letter reveals inconsistencies in its translation which lead to questions regarding which organization [redacted] describes in her letter. Notably, while the heading and first paragraph of the English translation describe her position as [redacted] of UHCR, the text in the Russian language document is the same as that in the seal at the bottom of the letter, which is translated as "Union of Enterprises and Specialists in Beauty Industry of the North-West." It is therefore unclear whether the membership requirements described, and the brief biographies of members of the admissions committee, are those of UHCR or this other association, for which the Petitioner has not established her membership. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Absent such a resolution, the evidence does not support the Petitioner's claim that her membership in UHCR qualifies under this criterion.

For all of the reasons stated above, the Petitioner has not established that the finding in our previous decision regarding this criterion was incorrect based upon an incorrect application of law or policy, or was incorrect based upon the evidence in the record of proceedings at the time of the decision.

[2] See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14. (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

> 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)

In our previous decision, we disagreed with the Director's finding that the Petitioner met this criterion, and vacated that finding. On motion, the Petitioner focuses on two of the articles that we found to not be about her and her work, published on the websites cosmo.ru and graziamagazine.ru, noting that both contain identical, and very brief, summaries of her career: "international makeup artist, coach and author of makeup images for [redacted] and [redacted]." She asserts that these words are sufficient to establish that the published materials are about her, noting that "Nowhere does the regulatory language state what percentage of the article's written content should discuss the Petitioner and her work." However, these very brief summaries of the Petitioner's career, contained within articles of several pages in which she provides her opinion about beauty products and social media personalities, are not sufficient to demonstrate that the articles are about her. See, e.g., Negro-Plumpe v. Okin, 2:07-CV-820-ECR-RJJ at *1, *7, (D. Nev. Sept. 8, 2008) (finding that articles "focusing on the character or the show, rather than the performer himself," are not about the performer); see also Noroozi v. Napolitano, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012) (finding that brief mentions of an athlete within articles about a team are not about the athlete). We further note that although the Petitioner asserts that both of these articles indicate that they are authored by "online staff," this language does not appear in the translation of either article.

The Petitioner further contends on motion that the article on the website of Grazia Magazine "arguably constitutes being a work product itself of [the Petitioner]," and is thus about her and her work. However, we note that a separate criterion at 8 C.F.R. § 204.5(h)(3)(vi) is intended for the consideration of published material authored by a petitioner. This criterion considers published materials written by others about a petitioner and his or her work.

For all of the reasons stated above, the Petitioner has not established that our previous decision regarding this criterion was incorrect based on the evidence in the record at the time of the decision.

> 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 acknowledges in her brief that she "decided not to pursue" her claim to meeting this criterion after receiving the Director's request for evidence, but now asks that this issue be reconsidered on motion. We note that she did not raise this claim in either her motion to reopen before the Director or on appeal. In general, we will not address issues that were not raised with specificity on appeal. We will therefore consider this issue to have been abandoned. See, e.g., Matter of M-A-S-, 24 I&N Dec. 762, 767 n. 2 (BIA 2009).

> Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

In our previous decision, we acknowledged the evidence of the Petitioner's earnings in the form of contracts for her services. Those contracts included one for 155,000 rubles in 2012, and three others

for which she was paid 200,000 rubles for projects in 2013, 2014 and 2015. We also acknowledged a letter from [redacted] general director of [redacted] who stated that the average monthly salary of makeup artists in Russia is 30,000 rubles, as well as evidence from the website trud.com showing that the average monthly salary is 40,000 rubles. However, we found that this data was not sufficient to establish that the Petitioner's salary is high relative to other makeup artists, since it did not provide a proper basis for comparison to the evidence of the Petitioner's earnings on specific projects.

On motion, the Petitioner asserts that since the submitted contracts show the amount she was paid for a single day of work, the fact that the amounts she earned were several times higher than the monthly average establishes that her salary is high compared to other makeup artists. However, we note that the evidence on which the Petitioner relies to establish the amount of her earnings consists of four contracts in four different years, and that those earnings considered on a monthly basis are actually lower than the monthly average stated on trud.com. In addition, as noted in the Director's initial decision, letters in the record regarding her additional earnings are not supported by documentary evidence, such as contracts or tax or payroll documents, and therefore are not sufficient to show her salary beyond that reflected in these four contracts. Therefore, the evidence does not demonstrate that the Petitioner's average monthly salary in 2012, 2013, 2014 and 2015 was high relative to others in her field.

B. Motion to Reopen

As previously noted, a motion to reopen is based on documentary evidence of new facts. On motion, the Petitioner presents new evidence regarding two criteria: those relating to her receipt of lesser nationally or internationally recognized prizes or awards, and to published material about her in professional or major trade publications or other major media. We will therefore consider only those criteria in our motion to reopen analysis.

> 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)

As additional evidence concerning the recognition of the awards received by the Petitioner, she submits pages from [redacted]'s website, as well as additional media articles about [redacted] The three website pages submitted include information about the number of worldwide members of the organization and its existence since 1946, and note that the organization "offers a Global platform to all competitors of the beauty sector of Hair, Aesthetics and Nail to become World champions in their own field…" In addition, they refer to the [redacted] Global Awards," which include Lifetime Achievement, Hall of Fame, and Ambassador Award among others. While this information confirms that [redacted] holds international competitions for hairstylists, makeup artists and aestheticians, it does not demonstrate that the awards earned by the Petitioner are nationally or internationally recognized.

In addition, the Petitioner submitted two additional media articles, one published on the website www.probeauty.org and the other on www.esteticamagazine.com. Both are brief notices about the [redacted] competitions in 2016 and 2019, respectively. As with many of the previously submitted articles, the article on the www.probeauty.org website refers to the competition as being among hairdressers, and does not mention the makeup competitions in which the Petitioner participated. The second article repeats the text from the [redacted] website noted above, and also

promotes the event as the [redacted] as in other materials. Neither article adds new evidence which establishes 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)

On motion, the Petitioner submits additional evidence regarding the circulation or viewership of media which published articles she asserts are about her and her work. She submits pages from the website cetre.ru which indicate that it "is a unique platform about the most interesting facts about the life of celebrities and the latest trends," and that the website has 220,000 unique users monthly and 1.1 million page views monthly. However, the record does not include evidence which establishes that those viewership or visitor figures are comparable to those for major media.

Also submitted on motion is a single webpage, www.totallook-magazine.com, which repeats a paragraph stating that the magazine is distributed in six countries. We note that circulation figures are not provided, and that the name of this magazine appears to be different than the magazine which the Petitioner asserts published an article about her, Total Look Children. This evidence is therefore insufficient to establish that Total Look Children is a major medium. Accordingly, the evidence submitted on motion does not establish that the Petitioner meets this criterion.

III. CONCLUSION

The Petitioner has not established 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. In addition, our review of new evidence submitted with the Petitioner's motion to reopen does not establish that she meets the individual criteria claimed or that is otherwise eligible for the requested benefit.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.