U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12195658

Date: DEC. 1, 2020

Motion on Administrative Appeals Office Decision

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

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 did not establish, as required, that she satisfied at least three of the ten initial evidentiary criteria for this classification. We dismissed the Petitioner's appeal of that decision. The Petitioner now submits a combined motion to reopen and reconsider, together with new evidence, and asserts that she meets two additional criteria as well as those we decided in her favor in our appellate 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. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

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).

II. ANALYSIS

The issue before us on motion is whether the Petitioner has either submitted new facts sufficient to warrant reopening her appeal and/or established that our decision to dismiss her appeal was based on an incorrect application of USCIS law or policy.

A. AAO Decision

In our appellate decision, we acknowledged the Petitioner's claim that she meets four of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), summarized below:

- (iii), Published material in major trade publications or other major media;
- (iv), Participation as a judge of the work of others in her field;
- (vii), Display of her work in artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director had concluded that the Petitioner satisfied the criteria related to published materials and judging the work of others. *See* 8 C.F.R. § 204.5(h)(3)(iii) and (iv). We also determined that the Petitioner had met two criteria; however, we withdrew the Director's conclusion that she had submitted sufficient evidence to meet the published materials criterion. We concluded that the Director had erred with respect to the display of her work at artistic showcases and determined that she did in fact meet that criterion.

On motion, the Petitioner addresses the criteria relating to published materials and leading or critical roles at 8 C.F.R. § 204.5(h)(3)(iii) and (viii). Specifically, she asserts that we overlooked certain evidence that was previously submitted and states that she is submitting new evidence establishing that she meets one

or both of these criteria. For the reasons discussed below, the Petitioner has not submitted new facts or evidence establishing that she meets any additional criteria, nor has she shown that our prior decision was based on an incorrect application of law or USCIS policy.

> *Published material about the individual 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 appellate decision, we reversed the Director's determination that the Petitioner had satisfied this criterion. We noted that, while the Petitioner had submitted copies of articles from various sources, a substantial number of them did not qualify as being about her, as this regulation requires. Although we concluded that four articles were about the Petitioner and relating to her work, we noted that one article from a [redacted] newspaper did not identify the author of the material and that none of the articles about her were accompanied by sufficient evidence to demonstrate that they qualify as major trade publications or other major media. Evidence submitted under this criterion should establish that the circulation or distribution (on-line or in print) is high compared to the circulation statistics of other publications.[1]

On appeal, the Petitioner disagrees with our conclusion and emphasizes her submission of articles that appeared in *OnStage Blog*, *Madrid Diario*, *El Diario Vasco* and *Dance Informa*, as well as television appearances on TV GLOBO, CUNY TV and New York 4. We acknowledge that we did not individually discuss every document submitted in support of this criterion in our decision; however, we considered each one in determining whether any of the Petitioner's evidence met all elements of this regulation criterion.

With respect to the *OnStage Blog* article referenced on appeal, we note this 2019 article post-dates the filing of this petition in May 2018. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). While this evidence is new, it cannot establish that the Petitioner met this criterion as of the date of filing, even if we determined that the article was published in major media.

With respect to the articles that appeared in the Spanish newspapers *Madrid Diario* and *El Diario Vasco*, we note that the Petitioner previously submitted rankings for these publications from *SimilarWeb*. This evidence indicated that *Madrid Diario* has a country rank of 2,819 and *El Diario Vasco* has a country rank of 341. The Petitioner correctly notes that we previously overlooked the fact that the original Spanish language article from *Madrid Diario* identifies the author of the material. However, the Petitioner has not established with the current motion that *Madrid Diario* qualifies as major media in Spain. She submits a document from an unidentified source that provides some background regarding this newspaper as well as a partially translated screenshot from the Spanish-language website *Auditoria* which appears to provide information about the number of times the

[1] *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.* 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html

Madrid Diario article about her was viewed. However, this new evidence does not establish that *Madrid Diario* qualifies as a major medium when compared to other publications. The Petitioner also claims that *Diario Vasco*, which she describes as a daily newspaper in Spain's [redacted] province, meets the "major media" element of this criterion. Although her brief on motion cites some additional statistics regarding this newspaper's readership, she has not supported these figures with any additional comparative evidence, and instead refers to the *SimilarWeb* information that we previously reviewed and found to be insufficient.

Finally, with respect to *Dance Informa*, we note that the Petitioner previously described this publication as "an online platform" that "provides all the information and news dancers need to keep current in the industry." The Petitioner previously provided statistics from *SimilarWeb* indicating that the website has a U.S. ranking of 813,159 and a category ranking of 2,698. On appeal, the Petitioner maintains that this publication qualifies as major media and provides information regarding its subscriber numbers and the number of visitors to its website which is not supported by any independent evidence. The Petitioner also states that *Dance Informa* "has been ranked #4 on top Dance Magazines in the US" by "Feedspot." While she submits a document with the heading "Top 10 Dance Magazines and Publications to Follow in 2020" which includes *Dance Informa*, the document does not identify the source of this list or what criteria were used to compile it.

In addition to the print media discussed above, the Petitioner emphasizes on appeal that she has appeared on TV Globo, CUNY TV, and another local New York television channel. With respect to her TV Globo appearance, the Petitioner submits a one-page document that includes five photos and/or still shots taken from a video interview, and what appears to be an excerpt from an e-mail from an individual identified as a "news producer" pitching the idea of a story about the choreography in the movie *La La Land*. The Petitioner's brief contains information regarding Brazilian television network TV Globo, describing it as "the largest commercial TV network in Latin America," but the record does not contain any independent evidence regarding the network or even identify the specific program for which the Petitioner was interviewed. Further, the submitted screen shots are not accompanied by a transcript of the interview, and the record does not establish when it aired. The other two television appearances she highlights in her appeal were aired on local New York television stations. Although she submits screenshots taken from the video interviews, she has not established that either appearance aired on "major media" and has not submitted transcripts of the interviews. The Petitioner has not established that her television appearances meet all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Overall, the Petitioner has not submitted new evidence on motion that establishes that she meets the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii). Further, she has not established that our previous determination with respect to this criterion was incorrect based on the evidence of record at the time of our decision, or that it involved an incorrect application of the law or USCIS policy to the facts presented.

> *Evidence that the individual 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)

With respect to this criterion, a title, with appropriate matching duties, can help to establish if a petitioner's role is or was, in fact, leading.[2] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical. In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.[3]

In our appellate decision, we acknowledged the Petitioner's leading role as co-founder and co-artistic director of [redacted] but concluded that she had not submitted evidence to demonstrate that [redacted] enjoys a distinguished reputation. We also noted that while the Petitioner provided evidence that she had served as a dance instructor for several dance schools, she had not shown how her part-time faculty positions were leading or critical to these organizations, or submitted sufficient objective evidence of these organizations' reputations. Finally, we acknowledged a letter from the [redacted] confirming that the Petitioner had served as a "team leader" and "Rehearsal Director" for its annual [redacted] event. However, we found that the letter did not establish how her activities for this event amounted to a leading or critical role for this organization. For example, we noted that the record indicated that there were several team leaders and rehearsal directors assigned to serve as assistants to choreographers.

On motion, the Petitioner asserts that the evidence she submitted in support of this criterion was "largely overlooked" and contends that she submitted testimonial evidence that clearly detailed her "irreplaceable role" in several organizations.

As noted, we acknowledged the Petitioner's leading role as co-founder of [redacted] but found insufficient evidence of this dance company's distinguished reputation. In her brief on motion, the Petitioner emphasizes that her dance company has been very active since 2011, "producing, touring and doing shows, events, videos." She emphasizes the company's longevity, and its appearance at "reputable and known festivals in [redacted]' including some that are invitation only and some with very competitive application processes, such as the [redacted].

With respect to the referenced testimonial evidence, the Petitioner notes that [redacted] refers to [redacted] as "an acclaimed" dance company with impressive accomplishments that include "award winning choreography, commissions, full length shows." [redacted] describes [redacted] as a "crowd favorite" that receives "great feedback from audiences." [redacted] Artistic Director for [redacted] states that [redacted] "is the only professional dance company to be presented on two different seasons of the Open Series." He emphasizes the "creativity, originality and technical accomplishment" of the company's work.

The Petitioner also submits two new reference letters on appeal, from [redacted] of [redacted] and professional dancer and choreographer [redacted] Although they mention the Petitioner's leading role with [redacted] their statements do not offer any new information regarding this dance company's distinguished reputation in the field. The testimonial evidence provided, while

[2] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.
[3] *Id* at 10-11.

complimentary to the Petitioner and her dance company, does not establish the company's distinguished reputation.

As noted in our appellate decision, the Petitioner also relied on documentation of [redacted]'s performances in support of her claim that it enjoys a distinguished reputation among dance companies. While the company's performances are well documented and the testimonials discussed above indicate that the company has received praise from members of the dance community, there is insufficient corroborating evidence of the [redacted]s standing in the field to establish that it is recognized as having a distinguished reputation "marked by eminence, distinction or excellence."

The Petitioner also asserts that she has been "a critical faculty member of [redacted] Company since 2015" and that she has provided chorography, dance instruction and unique performances on behalf of the company. A previously-submitted letter from [redacted] states that she applied to his company as a dancer in 2015 and joined the company as an understudy; he does not refer to her as a "critical faculty member" but notes that she currently assists with teaching and coaching repertory to new members. He indicates that, as of [redacted] 2019, the Petitioner is a female soloist, and he states that he currently considers her a "key leader in the company both as a dancer and an inspiration/subject to create new pieces for the company." [redacted] also states that the Petitioner "contributes significantly to the company as a dancer" and notes that audiences attend events specifically to see her perform. The record contains a media review of [redacted] Company's [redacted] 2019 [redacted]' show which briefly mentions the Petitioner's performance with [redacted] in a piece titled [redacted] but does not include evidence suggesting that she was serving as the organization's lead dancer, particularly given that the record reflects that she has been running her own dance company. A screenshot from the company's website simply identifies her as one of the dancers in the company.

This evidence does not establish that the Petitioner had served in a lead with this dance company at the time of filing. Further, although [redacted] uses the terms "leader" and "critical" in his letter, he does not explain in detail how she contributed in way that has been of significant importance to the outcome of his dance company's activities. For example, while he states that audiences are drawn to her performances, the record does not demonstrate her impact on attendance at his company's shows, such as by showing higher receipts for programs in which she is featured. Vague letters that simply repeat the regulatory language but do not explain how the petitioner's roles were leading or critical are not persuasive evidence. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), aff'd, 905 F. 2d 41 (2d. Cir. 1990); see also Avyr Associates, Inc. v. Meissner, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997).

The Petitioner further emphasizes that she identified "numerous dance studios where she taught both ongoing classes as well as workshops and master classes." She mentions several of them as being "best in the world and ranked amongst the top by several sources . . . which implies that the hiring process is highly competitive and only the best teachers and instructors are offered positions." However, the issue before us in evaluating this criterion is not the competitive nature of obtaining an instructor position with these studios, but whether the role itself was leading or critical. As we emphasized in our appellate decision, serving on the faculty of an institution is not inherently a critical

role and does not demonstrate that she significantly contributed to the outcome of an organization's activities as a whole.

On motion, the Petitioner specifically references her role with California dance school [redacted] A letter from this dance school's director [redacted] confirms that the Petitioner has twice choregraphed pieces for its dancers participating in the [redacted], which is described as a "worldwide ballet competition." She indicates that both pieces resulted in successes for the school's participating dancers, with one piece shared at the event's finals in [redacted] and the other winning a third-place finish regionally. [redacted] states that this recognition from [redacted] "helps us with marketing and in our standing as a reputable studio." However, the letter does not sufficiently explain how the Petitioner's contribution of two choregraphed pieces was so significant that it has critical to the outcome of the organization's activities as a whole. Further, the record does not include independent evidence that [redacted] has a distinguished reputation.

Finally, the Petitioner asserts that she believes "the AAO is not acknowledging the leading role [she] has in [the [redacted]." She states that '[redacted]' would not have been possible without her contributions to "creating, teaching and running rehearsals." However, as discussed in our previous decision, the evidence does not establish that she held a leading role for [redacted] or that her contributions to the [redacted] event were critical to the outcome of [redacted] as a whole. Letters from [redacted] confirmed that she was one of several team leaders and rehearsal directors assisting the event's choreographer. While the [redacted] letters conveyed that she is a valued member of the organization and an "important asset," they do not support the Petitioner's claim that [redacted] would not have been possible without her or that her activities for [redacted] amount to a leading or critical role for this organization.

For the reasons discussed above, the Petitioner has not submitted new evidence on motion to establish that she meets the leading or critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii). Further, she has not established that our previous determination with respect to this criterion was incorrect based on the evidence of record at the time of our decision, or that it involved an incorrect application of the law or USCIS policy to the facts presented.

III. CONCLUSION

The Petitioner has not shown that we incorrectly applied law or policy in our previous decision, nor does her new evidence on motion establish that she meets at least three criteria. Accordingly, the motions will be dismissed.

In addition, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires the motion to be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceedings and, if so, the court, nature, date, and status or result of the proceeding." The Petitioner, however, did not include the required statement. For this additional reason, the Petitioner's motions do not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.