



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

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

In Re: 5938070

Date: FEB. 11, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a tennis academy, seeks to classify the Beneficiary as an alien of extraordinary ability in the arts as a curator and historian of expressive realism art. *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 denied the petition, concluding that the record did not establish that the Beneficiary met any of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), of which three are required. On appeal, although we concluded that the Beneficiary met the judging criteria at 8 C.F.R. § 204.5(h)(3)(iv), we affirmed the Director's decision that she did not meet the initial evidence requirement of at least three criteria.¹ We subsequently denied the Petitioner's motion to reopen, as well as a combined motion to reopen and reconsider.

The Petitioner has now filed its third motion. It asserts that we did not consider additional evidence submitted with its previous appeal and motions. 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 the motion.

I. LAW

The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). 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. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

¹ *See Matter of A-T-A-*, ID# 737937 (AAO Dec. 19, 2017)

II. ANALYSIS

As was noted in our previous decision, the Petitioner has again not submitted a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding, as required under 8 C.F.R. § 103.5(a)(1)(iii)(C). It has therefore not met the filing requirements for a motion. In the alternative, for the reasons discussed below, the Petitioner has not established that we should grant its motion to reconsider.

With respect to the criterion for the Beneficiary's authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner highlights an essay written by her and published in what it describes as an art catalogue. The Petitioner asserts that we "failed to even mention this criteria [*sic*]." A review of our previous decision shows that we considered the referenced evidence and provided a detailed analysis of the reasons why it was neither scholarly nor published in a professional or major trade publication or other major media.²

Turning to the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence of the Beneficiary's leading or critical role for an organization or establishment having a distinguished reputation, the Petitioner asserts that we failed to consider evidence of the Beneficiary's appointment to lead a large art donation for the [redacted] Foundation. Here again, review of our previous decision reveals that this evidence about the foundation and her role within it was thoroughly reviewed and analyzed. In addition, the Petitioner repeats the vague assertion in its previous motion regarding "other roles" held by the Beneficiary, but does not point to specific evidence in the record or a law or policy that was misapplied in our previous decision.

While the Petitioner further asserts in its brief that the Beneficiary meets six of the evidentiary criteria, it provides no further legal or factual arguments regarding an additional three criteria beyond those already discussed above. It has therefore not established that our previous decision regarding the criteria relating to the Beneficiary's membership in associations, original contributions, or display of her work at artistic exhibitions or showcases was based on an incorrect application of law or policy, or was incorrect based upon the evidence in the record.

III. CONCLUSION

The Petitioner's motion to reconsider this matter is dismissed because it does not meet the motion filing requirements under 8 C.F.R. § 103.4(a)(1)(iii)(C). In the alternative, the motion is dismissed because the Petitioner has not established that our previous decision was based on an incorrect application of law or policy, or that it was incorrect based upon evidence in the record of proceeding at the time of filing.

ORDER: The motion to reconsider is dismissed.

² See *Matter of A-T-A-*, ID# 2060602 (AAO Feb. 21, 2019)