



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

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

In Re: 5444507

Date: JAN. 21, 2020

Motion on Administration Appeals Office Decision

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

The Petitioner, an artist who works in several different media, 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 Texas Service Center denied the petition and certified the denial to us.<sup>1</sup> We affirmed the Director's denial, determining that the Petitioner did not establish, as required, that he has received a major internationally-recognized award, or, in the alternative, that he meets at least three of the ten initial evidentiary criteria for this classification.<sup>2</sup> The Petitioner subsequently filed two combined motions to reopen and reconsider. We dismissed both combined motions,<sup>3</sup> and the matter is now before us again on a motion to reopen.

On motion, the Petitioner submits additional evidence and states that he has now established that he meets three of the ten evidentiary criteria and is eligible for the classification sought.

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 to reopen.

## I. LAW

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition.

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<sup>1</sup> Prior to this certified decision, we remanded this matter to the Director twice with instructions to correct certain errors and issue a new decision.

<sup>2</sup> *See Matter of B-L-*, ID# 880078 (AAO Nov. 14, 2017). In dismissing the appeal, we determined that the Petitioner met two of the initial evidentiary criteria, relating to published material about him and his work, and display of his work at artistic exhibitions and showcases. *See* 8 C.F.R. § 204.5(h)(3)(iii) and (v).

<sup>3</sup> *See Matter of B-L-*, ID# 1320289 (AAO July 24, 2018) and *Matter of B-L-*, ID# 2119400 (AAO Mar. 5, 2019).

## II. ANALYSIS

### A. Prior Decision

As a preliminary matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. Here, the subject of the prior decision was our dismissal of the Petitioner's second combined motion to reopen and reconsider. As such, the purpose of this decision is to examine any new facts and supporting evidence that pertain to the dismissal of that motion.

In our immediate prior decision, we determined that the Petitioner did not meet the requirements for a motion to reconsider at 8 C.F.R. 103.5(a)(3) because he did not specifically point to any errors in our previous decision. Accordingly, we determined that the Petitioner had neither alleged nor demonstrated that our previous decision, dismissing its first combined motion, was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record at the time.

With respect to the Petitioner's most recent motion to reopen, we acknowledged that he submitted new evidence that included an August 2018 personal statement as well as letters from two fellow artists who discussed his biographical information and work. This evidence was intended to demonstrate that the Petitioner met the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(v), relating to original contributions of major significance in his field. We determined that the new letters, while complimentary of the Petitioner and his work, were similar to evidence already in the record, and did not specifically articulate how the impact and influence of his artwork rises to the level of a contribution of major significance in the field. Therefore we determined that the Petitioner had not presented new facts sufficient to overcome our prior determination that he did not meet this criterion.

### B. Motion to Reopen

With the instant motion, the Petitioner submits an excerpt of a book titled *Ten Years of Contemporary Art Documenta*. The excerpted pages are full-page photographs captioned as follows: [REDACTED]

[REDACTED] The caption also includes four names, one of which is the Petitioner's, and the date and location [REDACTED]. If the book's curators provided any commentary or discussion of this project or its significance to accompany the photographs, or any additional information regarding the Petitioner's involvement in the project, it was not included among the pages submitted for our review.

The only context for the new evidence is provided in counsel's brief. He notes that the book "was compiled by two famous artists to record and document most precious contemporary art work from 2003 to 2013" and notes that "documenta traditionally features artists who have had a significant influence on modern art (such as Picasso and Kandinsky)." Counsel asserts that the Petitioner's inclusion in this "important book . . . underscores his contributions to and widespread recognition in the art community." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

Therefore, while the evidence submitted on motion is new, it does not overcome our previous finding that the Petitioner did not meet the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), either viewed alone or in the context of the evidence previously submitted to satisfy this criterion. Further, we note that the newly submitted book excerpt is comparable to other evidence provided previously. While the Petitioner's inclusion in such published collections of art is notable, he has not shown how his original artistic contributions have been of major influence in the field, by providing, for example, evidence that his contributions have been widely implemented, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

### III. CONCLUSION

The motion to reopen is denied because the Petitioner has not submitted new evidence demonstrating that he meets the initial requirements for the classification sought.

**ORDER:** The motion to reopen is dismissed.