



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

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

In Re: 10857082

Date: OCT. 5, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, an actor, seeks classification as an alien of extraordinary ability.¹ 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that the Petitioner had a major, internationally recognized award, nor did the foreign national demonstrate that he met at least three of the ten regulatory criteria. In our decision on the Petitioner's appeal, we came to the same conclusion as the Director. The Petitioner now submits a combined motion to reopen and reconsider, together with new evidence, and asserts that he meets two additional criteria as well as those we decided in his favor in our appellate decision.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.² Upon review, we will dismiss the motions.

I. LAW

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 he or she 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

¹ See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).

² Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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.³

A motion to reopen is based on *new facts* that are supported by documentary evidence, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). If warranted, we may grant requests that satisfy these requirements, then make a new eligibility determination.

II. ANALYSIS

Within the Director's decision, he concluded that the Petitioner had satisfied the requirements of the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), but that he had not met the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) or the leading or critical role requirements at 8 C.F.R. § 204.5(h)(3)(viii). Ultimately, the Director denied the petition. We came to the same conclusion in our appellate decision and further determined that the Petitioner had not shown that the significance of his work was indicative of the required sustained national or international acclaim or that it was consistent with a "career of acclaimed work in the field" as contemplated by Congress.⁴ Moreover, we decided that the record did not otherwise demonstrate that the Petitioner had garnered national or international acclaim in the field, and he was one of the small percentage who had risen to the very top of the field of endeavor.⁵

On motion, the Petitioner addresses two criteria: (1) that he performed in a leading or critical role for entities that have a distinguished reputation, and (2) that he has contributed original contributions of major significance in the field of acting.

A. Procedural Shortcomings

First—and as part of the basic requirements to file any motion before U.S. Citizenship and Immigration Services (USCIS)—the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that a motion must be accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding. We note that the Petitioner did not submit a statement relating to this mandate. Pertaining to this shortcoming, the regulation at 8 C.F.R. § 103.5(a)(4) requires that a motion that does not meet applicable requirements shall be dismissed. As the Petitioner did not provide the required statement, the motions must be dismissed based solely on this essential regulatory requirement.

Additionally, 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).

³ See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

⁴ H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act.

⁵ See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

In his motion brief, the Petitioner presents a summary of the case history and our determinations when we dismissed his appeal. Neither the motion brief nor other documentation in support of the motion, identifies any errors in our decision based on the record at the time. As this filing does not satisfy the requirements for a motion to reconsider the matter, we will dismiss this motion.

B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence.⁶ According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a “new” fact. We interpret “new facts” to mean facts that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute “new facts.”

1. Leading or Critical Role Criterion

The Petitioner claims he performed in a leading or critical role for three entities: (1) [redacted] Coaching, providing services as a private acting coach and mentor; (2) [redacted] an organization founded to assist South African performing artists in [redacted] and (3) [redacted] Worldwide.

a. [redacted] Coaching

[redacted] the owner of this coaching organization, indicated within his initial letter that the Petitioner began as one of his students. As the foreign national’s instructor, he noted unique gestures the Petitioner would perform that [redacted] incorporated into his own auditions for new acting positions, as well as into his teaching curriculum. [redacted] attributes this knowledge to the Petitioner and he stated that this new technique resulted in more of his clients having success in their auditioning process.

In a subsequent letter, [redacted] indicated that the Petitioner’s ability encouraged him to bring him on board to assist in coaching his clients. He also noted that the Petitioner played a vital role in choosing the right material and providing feedback for the students. Within [redacted]’s letter submitted with the motions, he claims that the Petitioner holds a key position in his organization and the action vocabulary technique has become an essential part of the business.⁷ [redacted] further states that the technique has resulted in many breakthroughs for himself, for many of his successful students, and for other actors that the Petitioner has trained outside of [redacted]’s business operations.

In our appellate decision, we concluded that [redacted] offered claims of how the Petitioner contributed to the methods he utilized on his clients, but the record did not establish the critical

⁶ 8 C.F.R. § 103.5(a)(2).

[redacted] describes the action vocabulary technique as a method of various body movements in which the actor displays a physical reaction associated with the text in the script rather than the traditional method of reacting blindly to the text from a purely mental state.

capacity the foreign national played in the success of the business. Within his motions, the Petitioner offers a new letter from [redacted] that discusses the “action vocabulary technique” he performed for the coaching studio.

Reviewing all three letters from [redacted] in the record, we observe inconsistent accounts relating to the Petitioner’s involvement in developing what is now referred to as the action vocabulary technique. In [redacted]’s first letter, he did not mention the “action vocabulary technique” and instead described how the Petitioner “brought out some very unique approaches” and that his “attention to detail and international experience played a valuable part in my audition and character process” for an acting role. Within [redacted]’s second letter, he stated that “[w]hen I began teaching [the Petitioner], I introduced this method to him and as a result he responded very well to it in a very short period of time.”

Now in [redacted]’s third letter, he presents differing accounts of the method’s origins. [redacted] initially states that “[w]e created a unique and highly effective technique,” and indicates that this method was an “incredible insight that [the Petitioner] and I discovered.” He goes on to state that without the Petitioner, “I would not have developed the effective and popular Action Vocabulary Technique.” [redacted]’s differing accounts do not establish what the Petitioner’s level of involvement was in developing the action vocabulary technique. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies.⁸ He has not met his burden to demonstrate that he has contributed in a way that is of significant importance to the outcome of the organization’s or the establishment’s activities.⁹

Further, the record does not corroborate [redacted]’s assertions on the importance of the action vocabulary technique for his organization. Although he describes it as “popular,” we observe that none of the quotes listed on [redacted]’s website discuss the action vocabulary technique. Outside of [redacted]’s letters, the record contains no references to the technique that would indicate its importance to the organization. Therefore, [redacted]’s unsupported assertions fall short of demonstrating the Petitioner’s eligibility under this criterion. Such statements made without supporting documentation are of limited probative value and are insufficient to satisfy the Petitioner’s burden of proof.¹⁰

Finally, in reference to [redacted]’s statement relating to the foreign national training actors outside of [redacted] Coaching, the Petitioner has not explained how that activity sufficiently relates to this criterion’s requirements demonstrating that he has performed in a leading or critical role for [redacted] Coaching. Additionally, [redacted] does not offer specific examples, and the Petitioner’s motion brief does not describe corroborating evidence identified under the leading or critical role criterion, relating to the “many . . . successful students” that the foreign national has trained on this organization’s behalf. The record lacks evidence supporting [redacted]’s claims. Such statements made without supporting documentation are of limited probative value and are insufficient to satisfy the

⁸ *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988).

⁹ USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 10 (Dec. 22, 2010) (Policy Memo), <http://www.uscis.gov/legal-resources/policy-memoranda>.

¹⁰ See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998).

Petitioner's burden of proof.¹¹ The Petitioner has not demonstrated that he performed in a leading or critical role for the [redacted] Coaching organization.

Turning to the issue of whether the [redacted] Coaching organization enjoys a distinguished reputation, we determined in the appeal decision that [redacted]'s statements and screenshots from his website were inadequate to demonstrate this requirement. Within the motions, the Petitioner claims that top actors have been quoted regarding the importance of the organization, which are also posted on [redacted]'s website. The Petitioner posits that if these quotes were not accurate, those actors would have sued [redacted] and had him remove the content. Reviewing the actors' comments on the website appears to reflect more upon [redacted] himself than on him as an acting instructor, and notably, these actors make no mention of the organization itself.

Finally, the Petitioner's motion brief does not specifically describe how any other evidence establishes this organization enjoys a distinguished reputation. As a result, the Petitioner has not demonstrated that he has satisfied the requirements for the leading or critical role criterion relying on [redacted] Coaching.

b. [redacted]

A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be discernable from its impact on the organization or the establishment's activities. An individual's performance in this position should establish whether it was critical for the organization or the establishment as a whole. The evidence relating to this organization is comprised of a printout from their website's "About Us" page and three letters from [redacted] the CEO and founder of [redacted]. This organization's mission is to provide fellow South African artists a safe haven to further pursue their entertainment careers when they arrive in [redacted].

In his first letter, [redacted] indicated that he hired a small group of experienced South African artists to aid newly arriving actors from that country acclimatize to the acting atmosphere in the United States. [redacted] indicated that the Petitioner provided vital information to the new personnel including "how to immigrate, what to expect in the acting communities in the United States, and what is required in order to be successful in [redacted] as an artist." [redacted] stated the result was an elevation of [redacted] within the community, which was evidenced "when we attended the private screening of the major motion picture 'Walk to Freedom - Starring Edris Elba' [sic] which took place at the prestigious 'Directors Guild of America' in Hollywood." He further noted that the Petitioner was one of this organization's youngest founding members and that he is a member of [redacted] committee. Within his second letter, [redacted] reported that the Petitioner assisted [redacted] through teaching their acting students new techniques, which resulted in their foreign pupils quickly and effectively adapting to the American film and television market.

In our appellate decision, we decided that [redacted] did not clearly identify what the Petitioner's role for [redacted] encompassed nor did he sufficiently explain how the foreign national had contributed to the overall success of the organization's activities. Within the Petitioner's motion brief, he contends that his unique method has helped the organization's new actors to expand their craft by integrating new cultures

¹¹ See *id.*

and backgrounds into their characterization techniques. [redacted] claims the success of the Petitioner's acting curriculum has expanded [redacted] to hundreds of members.

Correspondence from those with "personal knowledge of the significance of the alien's leading or critical role can be particularly helpful to USCIS officers in making this determination as long as the letters contain detailed and probative information that specifically addresses how the alien's role for the organization or establishment was leading or critical."¹² However, [redacted]'s letters do not sufficiently describe the Petitioner's role in such a way. While making broad claims about his impact, the letters lack details about the Petitioner's work and its effect on the organization. [redacted] does not provide relevant details, such as when or how often the Petitioner taught, how many students he instructed, or how these classes were more significant than the organization's other activities. The Petitioner has not supplemented the record with other evidence demonstrating the significance of his role.

Next, we address the claim that the Petitioner's work elevated [redacted] in the acting community through their invitation to attend the private screening of a major motion picture. Although [redacted] attributed the foreign national's efforts to the organization's invitation to a private screening, he did not explain the link between this alien's actions and such an overture.¹³ Simply claiming that the Petitioner trained [redacted] students does not sufficiently elucidate such a result, and the Petitioner should offer more than simple assertions relating to this cause-and-effect relationship.¹⁴ However, the Petitioner did not offer probative material demonstrating [redacted] was invited to attend a private screening of this movie, nor does the record depict a discernable connection between [redacted] and this movie other than both share South African roots.

As it relates to the Petitioner's membership on [redacted] committee, [redacted] did not describe the duties the Petitioner performed in that role that might illustrate his functions were leading or critical. Finally, the Petitioner did not support his claim that [redacted] expanded because of his work. The record does not establish how many members [redacted] had prior to his assistance, nor does it contain evidence to corroborate [redacted]'s assertions that [redacted] expanded "to hundreds of members" after the Petitioner joined. Further, even if such an expansion took place, the Petitioner does not establish that it was primarily attributable to his "acting curriculum." In summary, the record does not demonstrate how the Petitioner's performance for [redacted] was sufficiently leading or critical. Therefore, the Petitioner has not established that he performed in a qualifying role for [redacted].

Within our appellate decision we further stated, "the record does not contain any independent evidence regarding [redacted] or its reputation that would support a finding that it enjoys a distinguished reputation." Even if the Petitioner had demonstrated that he performed in a leading or critical role for [redacted] his motion does not address the organization's reputation. As a result, the Petitioner has not established that this organization would satisfy this criterion's requirements.

¹² Policy Memo at 10.

¹³ We were unable to identify a movie by the name "Walk to Freedom," starring Idris Elba. We presume [redacted] most likely meant the movie *Mandela: Long Walk to Freedom*.

¹⁴ See *Chawathe*, 25 I&N Dec. at 371-72 (discussing how assertions that are not supported by probative material will not meet a filing party's burden of proof).

c. [redacted] Worldwide

For the final entity the Petitioner claims on motion, he relies on a self-defense training organization, [redacted] Worldwide. Prior to the motions, the only evidence the Petitioner offered was letters from [redacted] a senior lead instructor for the [redacted] Worldwide facility in [redacted] California, and two accompanying blog posts about [redacted]. Within our decision on the appeal, we noted the lack of material relating to the particular studio where [redacted] works in [redacted], rather than to the larger corporate structure by the same name.

On motion, the Petitioner discusses our appellate decision, [redacted]'s tenure at the company, and how the foreign national has benefitted stunt choreography in major motion pictures, and the personnel acting in those movies. We discussed these topics in our decision on the appeal and they are not new facts relating to the Petitioner's role for [redacted] Worldwide, nor did the Petitioner present new facts about the distinguished nature of the organization. Therefore, he has not met the requirements for a motion to reopen for this organization or establishment.

2. Contributions of Major Significance

Within our appellate decision, we discussed several letters in support of the Petitioner's acting skills and talents, noting an absence of his significant impact within the overall field beyond acting students. On motion the Petitioner offers additional letters, some from the same individuals we discussed in the appeal dismissal, that explain how he has benefitted their own careers and unspecified others in the industry.

Because the Petitioner must satisfy at least three criteria to move to a final merits determination, and he is unable to achieve a favorable decision in at least three criteria based on our above analysis, it is unnecessary that we analyze his eligibility under the last claimed regulatory provision; his original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v).^{15, 16}

III. CONCLUSION

The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our adverse appellate decision.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

¹⁵ See *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues where an applicant is otherwise ineligible).

¹⁶ Additionally, we reiterate the apparent conflict in [redacted]'s letters as it relates to the origin of the action vocabulary technique. That technique was the Petitioner's only claim to eligibility under the contributions of major significance criterion. While we do not reach a conclusion on the merits of the Petitioner's claim, the inconsistencies in the record relating to the origin of the action vocabulary technique should be addressed in any future filing.