



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

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

In Re: 13697723

Date: APR. 5, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, an administrative services manager, seeks classification as an individual of extraordinary ability. 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 and subsequently dismissed a combined motion to reopen and motion to reconsider. We then dismissed the appeal.<sup>1</sup> The matter is now before us on a combined motion.

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 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 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).

Further, 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.

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<sup>1</sup> *See* In Re: 6798659 (July 22, 2020).

§ 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. ANALYSIS

The Director denied the petition, concluding that the Petitioner did not demonstrate that she received a one-time achievement and that she had not satisfied any of the initial evidentiary criteria, of which she must meet at least three. In addition, the Director dismissed the motions, determining that the Petitioner did not provide new facts or evidence and did not show that the Director erroneously applied law or policy.

In dismissing her appeal, we determined that the Director properly dismissed the motion to reopen because the Petitioner did not offer new facts or evidence; instead, she provided previously submitted documentation. Further, we concluded that the Director properly dismissed the motion to reconsider because the Petitioner did not state the reasons why the Director should reconsider the decision, and she did not identify any erroneous application of law or policy. Moreover, we decided that the Petitioner did not establish her receipt of a major, internationally recognized award. Further, we determined that the Petitioner did not establish eligibility for any of the following claimed criteria: awards at 8 C.F.R. § 204.5(h)(3)(i), memberships at 8 C.F.R. § 204.5(h)(3)(ii), published material at 8 C.F.R. § 204.5(h)(3)(iii), judging at 8 C.F.R. § 204.5(h)(3)(iv), original contributions at 8 C.F.R. § 204.5(h)(3)(v), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and high salary at 8 C.F.R. § 204.5(h)(3)(ix).

For the reasons discussed below, the Petitioner's combined motions do not overcome our prior decision dismissing her appeal.

### A. Judicial Proceeding Statement

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. Therefore, the Petitioner's motions do not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

### B. 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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner restates and describes the evidence she submitted under the one-time achievement and the evidentiary criteria relating to awards, memberships, published material, judging, original contributions, and leading or critical role.<sup>2</sup> However, the Petitioner does not argue or point to how we incorrectly applied law or policy in our prior decision, as required for a motion to reconsider. In fact, the Petitioner does not even mention

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<sup>2</sup> The Petitioner's motion to reconsider does not address our decision regarding the scholarly articles and high salary criteria.

our decision and address our specific conclusions, including our determinations on the Director's combined motion decision. Disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Furthermore, our decision thoroughly analyzed and explained why every piece of evidence and arguments addressed in the motion did not meet the regulatory requirements. Here, the Petitioner did not demonstrate that we erred in either misapplying law or policy or failing to address prior arguments or evidence.

For these reasons, we will dismiss her motion to reconsider.

### C. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner provides the following new evidence under the corresponding criteria: 1) a certificate from [redacted] dated December 8, 2011 (awards); 2) a letter from the People Management Association of the Philippines dated January 3, 2006 (memberships); 3) letters from [redacted] and [redacted] dated December 28, 2012 and January 8, 2003, respectively (judging); 5) letters from [redacted] and [redacted] dated March 11, 2017 and July 18, 2017, respectively (leading or critical role); and 6) 2005 Filipino income tax documentation (high salary). However, as the Petitioner did not submit these documents before the Director, either at the time she filed the petition or in response to the Director's request for evidence, we will not consider these claims and documents in our adjudication of this motion. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaighena*, 19 I&N Dec 533 (BIA 1988).

Although the documents pre-date the filing of her initial filing, the Petitioner did not explain why she did not present these documents before the Director. Accordingly, we will not consider this evidence to determine the Beneficiary's eligibility under the applicable criteria for the first time on motion. As such, we will dismiss her motion to reopen.

### III. CONCLUSION

The Petitioner has not shown that we incorrectly dismissed her appeal based on the record before us, nor did she demonstrate that her additional evidence fulfills at least three of the evidentiary criteria.

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

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