



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

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

In Re: 27856361

Date: NOV. 27, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a professor, 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).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish the Petitioner met the initial evidence requirements for the classification by establishing her receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

## 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 establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

## II. ANALYSIS

The issue in this matter is whether the Petitioner has submitted new facts supported by documentary evidence sufficient to warrant reopening her appeal and/or established that our decision to dismiss the appeal was based on an incorrect application of law or USCIS policy. We incorporate our prior

decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.<sup>1</sup>

#### A. Prior AAO Decision

In our decision dismissing the Petitioner's appeal, we determined that she satisfied two of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), including judging the work of others in her field at 8 C.F.R. § 204.5(h)(3)(iv) and authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). We also addressed the Petitioner's claim that she satisfied the criterion relating to leading or critical roles at 8 C.F.R. § 204.5(h)(3)(viii), and determined that the evidence did not satisfy this criterion. The Petitioner did not claim to meet any other criteria on appeal.

Because we concluded that the Petitioner did not meet the initial evidence requirements, we did not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advised that after a review of the record in the aggregate, the Petitioner did not demonstrate that she has earned sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor, as required by section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

#### B. Motion to Reopen

As noted, a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner's motion to reopen focuses on our determination that she did not satisfy the leading or critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii).

Our appellate decision noted the Petitioner's initial submission of a letter from [redacted] Director of English for Academic Purposes and Continuing Education of Non-Native English Speakers at [redacted] [redacted], who asserted that the Petitioner held a leading and critical role. [redacted] confirmed the Petitioner commenced employment at [redacted] in 2018 and was promoted in June 2021 to the position of the Coordinator of English Language Pathways program, which she describes as a "top position within the department." [redacted] further indicated that due to the Petitioner's "innovations within the curriculum, choice of courses, and individual outreach to students," enrollment into her program increased by 30 percent from the prior year.

In our appellate decision, we acknowledged the Petitioner's contention that she plays a leading and critical role at [redacted] based on the letter from [redacted] and by her achievement of earning the 2022 award of excellence in teaching from [redacted]. We concluded that although [redacted] confirms the importance of the Petitioner's contributions as the coordinator of English Language Pathways at [redacted] she does not establish that she performed a leading or critical role for [redacted] as a whole, such as by showing she influenced its overall reputation or status, or was responsible for the success of the organization. We determined that while [redacted] stated that due to the Petitioner's efforts, enrollment in her program increased by 30 percent from the prior year, it is not clear from the record that the Petitioner's actions

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<sup>1</sup> While we may not individually discuss each piece of evidence the Petitioner submits with her current motion, we have reviewed and considered each one.

and contributions in fact led to the increase. We noted that increase in enrollment could be caused by several different factors, and without more information it is impossible to correlate the increase to the Petitioner's actions and not some other factor, such as changes in the pandemic and students returning to campuses, or any other possible factors. We further noted that although [redacted] stated that the Petitioner's innovations within the curriculum and choice of courses contributed to higher enrollment and funding for the program, she did not provide specific examples.

We found that while the evidence indicated that the Petitioner worked on projects to enhance [redacted] program, and thereby supported its mission, she did not provide sufficient documentary evidence to show that her duties and responsibilities as a coordinator of the English Language Pathways program were critical to the greater organization, as claimed, rather than to the outcome of specific, limited tasks or projects. We also determined that the Petitioner did not sufficiently explain or demonstrate that her role as a coordinator for one program out of several departments in a college constitutes a critical or leading role for the overall organization.<sup>2</sup>

On motion, the Petitioner submits new documentation, including a third letter from [redacted] a new letter from [redacted] President of [redacted] and exhibits in support [redacted] distinguished reputation. The Petitioner asserts that this evidence establishes that she satisfies the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), as it "highlighted my leadership role at the college" and "pointed out how important and valuable my contribution is to the institution, the establishment and the community."

The new letter from [redacted] is nearly identical to a letter provided within the Petitioner's response to the Director's request for evidence, with the exception of additional information in "Appendix B" and a new "Appendix D." In Appendix D, [redacted] asserts that the Petitioner played a critical role for the department's [redacted] program in having redesigned "more than 20 courses" to gain approval for Continuing Education Equity by Design (CEED) grant funding. She asserts that through the Petitioner's efforts "the continuing education BBESL program also increased its enrollment" and "this ultimately helped the department and the college. . . ." [redacted] letter, however, does not sufficiently demonstrate or explain how the Petitioner's having obtained approval for CEED grant funding for the [redacted] program was of significant importance to the outcome of [redacted] activities, as claimed.

In addition, [redacted] letter includes, at "Appendix B," reports of enrollment numbers for Continuing Education for Fall 2022 (updated) and Spring 2023 (new), showing it experienced an increase in enrollment for those semesters when compared to the prior year, which she credits to the Petitioner's "invaluable and irreplaceable expertise" as coordinator of the English Language Pathways program. However, this documentation dates from September 2022 to April 2023, after the filing date of the petition in June 2022. Although a motion to reopen allows the submission of new evidence related to eligibility, the Petitioner must still 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.

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<sup>2</sup> We further determined that as the Petitioner had not established that she performed in a critical or leading role for [redacted] that further discussion of the college's reputation would serve no meaningful purpose.

§ 103.2(b)(1). Accordingly, the submitted enrollment reports for Continuing Education for the Fall 2022 and Spring 2023 semesters do not present new facts that warrant the reopening of this matter.

Further, the Petitioner submits a letter from the president of [redacted] who claims that the Petitioner's "role as both a director and a highly skilled instructor makes her particularly valuable to [redacted]" In addition, he asserts that her "proven leadership is critical to [redacted] with the high levels of non-English speakers and immigrant populations in the community we serve," but he does not provide details about the criticality of the Petitioner's role for [redacted] Instead, he discusses generally the work of the department, such as instruction for English language learners, English language for the workplace, and its partnership with the [redacted] College of Foreign Languages in Japan.

Moreover, although he notes her receipt of the 2022 [redacted] Excellence in Teaching Award, he does not explain how the award establishes that the Petitioner played a critical role in any success [redacted] enjoyed over the course of the academic year. [redacted] letter does not establish that the Petitioner's role as coordinator of the English Language Pathways program was "leading" based on her title, placement in the organization, or her duties, nor does he provide sufficient information to establish that the success of the Petitioner's work in that position was of significant importance to the outcome of [redacted] activities to the extent that her role was deemed critical.

The letters considered above primarily contain bare assertions of the Petitioner's performance in a leading or critical role for [redacted] without providing specific examples of how her work as a program coordinator constitutes a critical or leading role for the overall organization. As stated in our prior decision, 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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. At 17.<sup>3</sup>

For the reasons discussed, the information provided from the new letters from [redacted] [redacted] does not overcome our previous conclusion that the Petitioner does not meet the regulatory criterion at 8 C.F.R § 204.5(h)(3)(viii). As the new evidence does not demonstrate eligibility, the motion to reopen will be dismissed.

### C. Motion to Reconsider

As discussed, a motion to reconsider must establish that our prior decision misapplied law or USCIS policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner contests the correctness of our prior decision with regard to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner maintains that we erred in dismissing the appeal, but she does not specifically identify or rebut any specific errors in our decision. A motion to reconsider must specify the factual and legal issues that were decided in error or overlooked in our prior decision. *Cf.*

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<sup>3</sup> As the documentation submitted on motion has not overcome our previous determination that Petitioner has not established performance in a critical or leading role for [redacted] we need not consider the question of whether the organization has a distinguished reputations.

*Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).<sup>4</sup> (“[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior . . . decision. The moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision . . . .”)

Here, although the Petitioner has submitted a brief in support of the motion to reconsider generally alleging error in the prior decision, she does not contend that we erred as a matter of law or USCIS policy in finding, based on the evidence in the record of proceedings, that she did not establish that she satisfies the leading and critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). As such, the motion does not meet all the requirements of a motion to reconsider, and the motion to reconsider must be dismissed.

### III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

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

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

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<sup>4</sup> *O-S-G-* relates to motions to reconsider before the Board of Immigration Appeals, governed by 8 C.F.R. § 1003.2(b)(1), which provides: “A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority.” These requirements are fundamentally similar to those found at 8 C.F.R. § 103.5(a)(3), and therefore the same logic applies.