U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37689489

Date: APR. 16, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an actor, 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.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification, as required. 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 motions.

A. Motion to Reconsider

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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contends that our decision was incorrect based on the evidence in the record at the time of our prior decision, and that we "dismiss[ed] the evidence as insufficient without any substantive explanation."

In our dismissal notice, we concluded that the Petitioner had not established that she meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) relating to awards (i), memberships (ii), published material (iii), original contributions (v), and high salary (ix). Because our consideration of those five criteria was sufficient to determine the outcome of the appeal, we reserved two further criteria relating to display of work (vii) and leading or critical role (viii). We will discuss the relevant criteria below.

Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). Allegations of error must be specific and supported by the record. As we will discuss below, the Petitioner has not met this burden on motion.

1. Prizes or Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner had previously shown that [redacted] won a "best performance" award at a theater festival held by the Turkish state of Konya. We agreed with SCOPS that the Petitioner had not established that she had personally received the award, or established its national or international recognition.

On motion, the Petitioner quotes the *USCIS Policy Manual*: "Nothing precludes the person from relying on a team award, provided the person is one of the recipients of the award." 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. But one can participate in a prizewinning activity or work for a prizewinning employer without being "one of the recipients of the award." The *Policy Manual* also specifies that the regulation requires the Petitioner to document "the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes." *Id.* In this instance, the named recipient of the prize is the theater, rather than the individual cast members. The Petitioner does not show that she personally received any prize or award at the festival.

The Petitioner contends that our "reasoning is inconsistent with industry standards, where individual excellence is often acknowledged through ensemble awards." As an example, the Petitioner cites "an actor in an Academy Award-winning film." But there are Academy Awards, and many lesser awards, for individual actors in both leading and supporting roles.

We also concluded that the Petitioner had not established that the award is nationally or internationally recognized. On motion, the Petitioner asserts: "Media coverage, festival documentation, and the competitive nature of the award confirm its international significance." The Petitioner does not specify further, and the general assertion that evidence in the record overcomes our determinations does establish that our decision was incorrect based on the record at the time of that decision. We considered that evidence in our prior decision, and the Petitioner cannot establish proper cause for reconsideration by contending that we must consider that evidence again.

We previously acknowledged the Petitioner's submission of a photograph of a badge from the [redacted] An accompanying certificate includes the Petitioner's name and a phrase translated as [redacted] We concluded that "this badge is not an award specific to the field of acting and for excellence in this field of endeavor," and that the Petitioner had not established that the award is nationally or internationally recognized.

On motion, the Petitioner asserts [redacted] awarded the badge explicitly for the Petitioner's artistic contributions, including in acting." The Petitioner cites no evidentiary support for

this assertion. The phrase [redacted] on the award certificate does not provide the specific reasons that the Petitioner received the medal.

A previously submitted letter from the awarding entity indicated that the Petitioner received the "[m]edal for the contribution and development of Kazakh Culture to the Kazakh Diaspora in the USA and in Kazakhstan," and indicated that the Petitioner founded "[a] vocal and dance school . . . for children of the Kazakh Diaspora." The record does not support the assertion that the Petitioner received the medal for excellence in acting. The Petitioner has not established error in our prior decision.

The Petitioner also asserts: '[redacted] is a prominent organization within the Kazakh diaspora in the United States. Recognition by such an organization constitutes national recognition within the U.S. and Kazakhstan." The Petitioner cites no evidence to support these assertions.

The final prize or award discussed on motion is a certificate of honor the Petitioner received from Kazak Radio. The Petitioner, on motion, cites no support for the assertion on motion that "[t]he certificate was awarded explicitly for outstanding performance, which directly correlates to acting ability." The English translation of the certificate states that the Petitioner is "the winner of the contest 'KONYR DAUYS,'" but does not specify the nature of the contest or what the Petitioner did to win it. In this respect we note that the English translation of the certificate includes a transliteration, but not a translation, of the name of the contest.

The Petitioner has not established that we erred in our prior determination regarding the criterion.

2. Membership

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) calls for documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

In our appellate decision, we agreed with SCOPS' determination that the Petitioner had not established that the [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts. We noted that the record shows that the Union requires applicants to be at least 18 years old, actively employed in "theatre art," with a specified level of education. These requirements do not conform to the regulatory language.

On motion, the Petitioner states "the union's constitution . . . does not preclude the Union from applying a higher standard when evaluating applicants." To meet her burden of proof, the Petitioner must establish the Union's requirements and show that those requirements are consistent with the regulation. General speculation that the Union could impose an unspecified "higher standard" cannot meet that burden, and does not show error in our prior decision. The Petitioner likewise does not substantiate the assertion that membership in a trade union "inherently conveys a level of distinction."

The Petitioner has not established that we erred in our prior determination regarding the criterion.

3. Published Material

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) calls for published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. The evidence must include the title, date, and author of the material, and any necessary translation.

The Petitioner had claimed to meet this criterion through interviews published in *Alash Ainasy* in 2014 and *Qazaq Adebieti* in 2022. We concluded that the Petitioner had not shown that the named newspapers meet the regulatory requirements. We previously acknowledged circulation figures that the Petitioner had provided for these publications, but determined that the Petitioner had not established that these figures established the newspapers as major media. Raw circulation figures, in isolation, lack context, and therefore we consider evidence of "*relative* circulation." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

On motion, the Petitioner asserts that she had previously "provided comprehensive documentation demonstrating that the publications . . . are well-established, widely circulated, and recognized as major media outlets within Kazakhstan." The Petitioner repeats assertions she had previously made in response to a request for evidence, and asserts that we erred by not taking into account the publications' "established credibility, high circulation, and national influence." But the burden is on the Petitioner to submit evidence to support these assertions. General claims that the Petitioner had previously met its burden of proof do not establish proper cause for reopening.

The Petitioner has not established that we erred in our prior determination regarding the criterion.

4. Original Contributions

The regulation at 8 C.F.R. § 204.5(h)(3)(v) calls for evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance. Such letters have more weight when the record includes documentation corroborating the claimed significance. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Submitted letters should specifically describe the contribution and its significance to the field. *Id.*

In our appellate decision, we quoted from "recommendation letters from colleagues within the Kazakh acting community . . . [that] are complimentary of the Petitioner's talents and ability," but we concluded that "beyond explaining [the Petitioner's] talents and attributes, the submitted letters provide little detail as to how her contributions to the field were original or how they had major significance within the field."

On motion, the Petitioner refers to some of the previously submitted letters and asserts that they contain significantly more detail than "general praise." The Petitioner makes several assertions about the content of the letters but does not provide quotations to support those assertions.

For example, one letter discussed on motion is from the director of the youth theater that employed the Petitioner from 2006 to 2023. The Petitioner states that the writer:

> confirms that [the Petitioner's] performances have played an instrumental role in maintaining the theater's relevance and vitality. His analysis goes beyond general praise, explaining how her portrayals of complex and emotionally resonant characters have shaped Kazakhstan's cultural narrative and reinforced the importance of theater in society. By showcasing her adaptability across film, television, and live theater, [the writer] underscores [the Petitioner's] ability to expand the reach and significance of theatrical arts, extending beyond traditional stage productions and elevating their international presence.

The letter in question consists mostly of descriptions of roles that the Petitioner has performed at the theater, on television, and on film. The theater director asserted that the Petitioner's performances resulted in several award nominations and "praise from the audience," and predicted that the Petitioner's "creative potential . . . will reach many heights," but the Petitioner has not identified any passage from the letter to show how the Petitioner's performances not only enhanced the productions in which she appeared, but had field-wide significance.

The Petitioner states that the writer of another letter:

> provides a highly detailed examination of [the Petitioner's] role in the film [redacted] [The writer] does not merely commend her acting ability; he emphasizes the profound thematic and cultural impact of her portrayal of [redacted], likening the character to the Motherland itself. . . . Her interpretation adds depth to the film's overarching themes of redemption and human struggle, demonstrating that her contributions are not just original but [also] transformative.

Here again, the record does not substantiate the Petitioner's interpretation of the letter. The letter is from [redacted] screenwriter and producer; he stated: "metaphorically, [redacted] – the role played by [the Petitioner] – is the image of the Motherland." This is an assertion about the character the writer created, rather than about the Petitioner's portrayal of that character. The screenwriter said nothing further about the Petitioner's portrayal of [redacted] his letter is primarily a summary of the screenplay he wrote and the film he produced.

Other letters praise the Petitioner's talent, versatility, and dedication to promoting the arts. These letters are from individuals who have worked directly with the Petitioner in various capacities, and their statements are not first-hand evidence of the Petitioner's wider influence or recognition.

The Petitioner, on motion, has not overcome our prior conclusions about the submitted letters.

The Petitioner maintains that her "contributions . . have influenced the field of acting, contributed to cross-cultural discourse, and garnered recognition on a global scale." The Petitioner asserts that our "conclusion disregards critical supporting evidence . . . and fails to properly analyze the impact of the Petitioner's work in both domestic and international settings." The Petitioner does not identify

"supporting evidence" separate from the letters. The general assertion that the Petitioner has met her burden of proof does not establish that we erred when we concluded otherwise.

The Petitioner has not established that we erred in our prior determination regarding the criterion.

5. High Salary

The regulation at 8 C.F.R. § 204.5(h)(3)(ix) calls for evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field.

In our appellate decision, we acknowledged the Petitioner's submission of salary certificates showing her remuneration from 2020 to 2023. We concluded that the Petitioner had not provided any basis for comparison to show that her salary was high in relation to others in the field as the regulation requires.

On motion, the Petitioner contends: "Attachment 19 in the Initial Petition contained official salary records that explicitly documented her earnings in comparison to industry standards, establishing her exceptional financial remuneration relative to her peers" and "her high financial standing compared to other theater actors in Kazakhstan." Attachment 19 comprises the "salary certificates" that we acknowledged in our appellate decision. These certificates show the amounts paid to the Petitioner, but they do not show the "industry standards" or average salaries of actors in Kazakhstan. Therefore, the salary documents provide no basis for comparison between the Petitioner and others in her field to show that she earned a high salary or significantly high remuneration in relation to others in the field.

The Petitioner asserts that the salary documents "are further corroborated by letters from industry professionals and employers, affirming her exceptional earning power in the field." The Petitioner does not specify which letters contain this information, nor does the Petitioner quote from those letters. The general assertion that the record contains unspecified supporting evidence is not sufficient to establish proper cause for reconsideration. A motion does not entail de novo review of the entire record, and therefore it is not incumbent upon us to search the record for materials that might match the general description the Petitioner offers on motion. As noted above, the Petitioner has made a number of claims about specific letters or other materials in the record which those documents do not corroborate or support.

The Petitioner has not established that we erred in our prior determination regarding the criterion.

In our appellate decision, we reserved discussion of two criteria at 8 C.F.R. § 204.5(h)(3)(vii) and (viii), relating, respectively, to display at artistic exhibitions or showcases and leading or critical roles for distinguished organizations or establishments. We reserved these issues because, given our other conclusions, there was no way for the Petitioner to satisfy at least three of the eligibility criteria. Therefore, detailed discussion of the remaining two criteria could not have changed the outcome of our appellate decision.

On motion, the Petitioner contends that our "failure to address the Petitioner's eligibility under [the reserved criteria] is a clear error in adjudication," because "[t]he regulatory framework requires a comprehensive analysis of all criteria presented."

All claimed criteria received due consideration in the initial adjudication of the petition, and the denial decision addressed those criteria. The adjudication of an appeal is not the same as the adjudication of the underlying petition. In our decision, we cited applicable case law indicating that, when discussion of a particular issue is not necessary to determine the outcome of an appeal, we may reserve that issue.

Specifically, we cited *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976), in which the Supreme Court acknowledged: "As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach." We also cited *Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022), which cited *INS v. Bagamasbad* in support of the principle that, once we have made determinations that are sufficient to decide the outcome of an appeal, we need not address additional issues that would not change that outcome.

On motion, the Petitioner does not address this cited case law, and the Petitioner does not establish that the outcome of the appeal would have been different if we had addressed the two criteria relating to display and leading or critical roles. As discussed above, we do not conclude that the Petitioner has overcome any of our prior determinations regarding the five criteria that we did address.

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. As such, the Petitioner has not shown proper cause for reconsideration. We will dismiss the motion to reconsider. 8 C.F.R. § 103.5(a)(4).

B. 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). 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).

On motion, the Petitioner submits web printouts concerning her claimed receipt of prizes and awards, and about newspapers that published articles about her. The Petitioner asserts that these new facts establish that she satisfied the criteria as 8 C.F.R. § 204.5(h)(3)(i) and (iii).

The Petitioner submits what she describes as "additional articles confirming the Petitioner's award [from a Turkish theater festival] is internationally recognized." The materials are printouts from the websites of the Turkish state of Konya, which hosted the festival, and of the youth theater that won the award. These materials do not establish wider recognition of the award beyond the entities that awarded and received it.

A printout from the website of the Kazakh American Center is not new to the record, because the Petitioner had submitted similar materials in response to a request for evidence.

The Petitioner also submitted web printouts from the publishers of the two Kazakh newspapers discussed further above. A printout from the publisher of *Alash Ainasy* provides the newspaper's circulation figures, considered previously, but adds no relevant new information to the record. A translated printout of the "About the newspaper" page from *Qazaq Adebieti*'s website describes the

newspaper's history but provides no new information to establish that the newspaper qualifies as a professional or major trade publication or other major media.

While most of the documents submitted on motion are new to the record, they introduce no new information to establish the Petitioner's eligibility for the highly restrictive immigrant classification that she seeks. Therefore, we will dismiss the motion to reopen. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.