



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

Date: **MAY 08 2015** Office: NEBRASKA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner filed a motion to reopen and reconsider. The director reopened the matter and denied the petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The petitioner filed a motion to reopen and reconsider. We granted the motion and affirmed our prior decision. The matter is now before us on a second motion to reconsider. The motion will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria. In our appellate decision dated July 3, 2014, we upheld the director's determination and affirmed our decision on December 15, 2014.

On motion, the petitioner submits a brief and additional evidence.

## I. LAW

The regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements. The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming the proper application of *Kazarian* by U.S. Citizenship and Immigration Services (USCIS)), *aff'd*, 683 F.3d 1030 (9<sup>th</sup> Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions or legal citation to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. *See Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. See *Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the “additional legal arguments” that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Further, 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. *Id.* Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

## II. ANALYSIS

In our latest decision dated December 15, 2014, we determined that the petitioner had not met at least three of the regulatory categories of evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Specifically, we determined that the petitioner’s evidence had satisfied the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iv) and (vii), but found that the petitioner had not met any of the remaining regulatory criteria.

On motion, the petitioner maintains that he also meets the category of evidence at 8 C.F.R. § 204.5(h)(3)(v): “Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” The petitioner asserts that we overlooked a March 2002 article entitled “\_\_\_\_\_” in \_\_\_\_\_ and posted on the \_\_\_\_\_ website.<sup>1</sup> The article describes the \_\_\_\_\_ opening and states that the show “featured oils by Bulgarian artist [the petitioner], as well as work by Bulgarian artists \_\_\_\_\_” In addition, the article states that the gallery’s owner, \_\_\_\_\_ a Chicago real estate investment banker, opened the gallery “to provide exposure to artists who are well known throughout Europe but have not yet had the opportunity to exhibit in the U.S.”

The petitioner states: “It is clear from this article that \_\_\_\_\_, recognizing my major artistic contribution to the visual arts in Europe, had decided to found \_\_\_\_\_ and my art was the only reason for opening that gallery.” The aforementioned article and a previously submitted letter of support from Mr. \_\_\_\_\_ dated May 23, 2006, however, do not state that the petitioner has made a “major artistic contribution to the visual arts in Europe” or that his artwork was Mr. \_\_\_\_\_ “only reason for opening that gallery.” In addition, the petitioner asserts that “the opening of the gallery has had a major influence on other European artists in the same field . . . by giving them the opportunity to exhibit their artwork in the United States for the first time.” Although the petitioner’s interactions with Mr. \_\_\_\_\_ whose letter of support stated that his “primary business is real estate,” may have helped influence Mr. \_\_\_\_\_ decision to open \_\_\_\_\_ there is no

<sup>1</sup> In our appellate decision under the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), we noted that the author of the article was not identified, and that the article is mostly about the \_\_\_\_\_ and not the petitioner. In addition, the petitioner did not submit evidence such as circulation figures for \_\_\_\_\_ or on online readership statistics for the \_\_\_\_\_ website, to demonstrate that they qualify as major trade publications or other major media.

documentary evidence showing that the gallery's opening and the exposure it provided to the four European artists mentioned in the article rise to the level of artistic contributions of major significance in the field. As discussed in our decision dated December 15, 2014, Mr. [REDACTED] did not provide specific examples of the petitioner's artworks that have influenced the field or otherwise constitute original artistic contributions of "major significance" in modern art. Furthermore, the letter from Mr. [REDACTED] and the March 2002 article do not explain how the petitioner's work has affected the field in a major way. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's artistic contributions be "of major significance in the field" rather than limited to galleries where the petitioner has arranged to display his work.

Our December 15, 2014, decision stated: "There is no documentary evidence demonstrating that the petitioner has significantly influenced other artists in the field, that any of his specific works are widely viewed as masterpieces of modern contemporary art, or that his original work otherwise equates to artistic contributions of major significance in the field."

In response, the petitioner asserts that we erred in characterizing his field as "modern contemporary art." The petitioner states: "In all of my evidence my artwork is categorized as being in the field of Eastern European art. Eastern European art is characterized by nationality, cultural heritage and religion of the Eastern European countries, and thus is more specific than 'modern contemporary art.'" As discussed in our previous decision, a May 2, 2011, letter from [REDACTED], Academician and Professor, [REDACTED], asserted that the petitioner is "one of those rare exceptions in modern art" and "a phenomenon in modern art." In addition, Professor [REDACTED] letter dated July 25, 2014, stated that the petitioner is "one of those rare exceptions in contemporary art." Furthermore, a letter from [REDACTED], dated July 31, 2014, mentioned the petitioner's work "in the field of the [sic] contemporary art." Accordingly, we do not find that our latest decision was in error. Regardless of whether we identify the petitioner's field as modern contemporary art or Eastern European art, the record does not establish that the petitioner's work rises to the level of artistic contributions of major significance in the field.

The petitioner further states that our prior decision "misinterpreted" the two letters from Professor [REDACTED] that Professor [REDACTED] letters were not solicited, and that the petitioner does not have a personal or working relationship with Professor [REDACTED]. As mentioned in our previous decision, while Professor [REDACTED] comments on the petitioner's artistic style and creative talent, he does not provide specific examples of how the petitioner's artwork has influenced the field or otherwise constitutes original contributions of major significance in the field. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. See *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). In addition, uncorroborated assertions are insufficient. See *Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support

the petitioner's eligibility. *Id.* See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Without additional, specific evidence showing that the petitioner's artwork has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that he meets the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v).

On motion, the petitioner submits a [REDACTED] "Draft' News Release" dated January 9, 2002. The petitioner submitted no documentation to indicate that the news release was ever published. Therefore, it is not probative evidence in this proceeding. In addition, the petitioner submits a photograph of himself working on a painting and a promotional flyer announcing a November 2, 2003, exhibition at [REDACTED]. New evidence is relevant to a motion to reopen, but the petitioner's Form I-290B, Notice of Appeal or Motion, and supporting brief do not indicate that he has filed a motion to reopen. See 8 C.F.R. § 103.5(a)(2). Even if we considered the petitioner's filing as a motion to reopen, the submitted documents do not show that the petitioner's artwork constitutes artistic contributions of major significance in the field.

### III. CONCLUSION

The petitioner's motion to reconsider is not supported by any pertinent precedent decisions or legal citation to establish that our December 15, 2014, decision was based on an incorrect application of law or USCIS policy. In addition, the motion does not establish that our decision was incorrect based on the evidence of record at the time of the decision. Furthermore, the petitioner did not submit a statement regarding any judicial proceeding relating to the validity of our December 15, 2014, unfavorable decision, as required under the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C). Lastly, the regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion to reconsider is dismissed.

We will affirm our prior decision for the above stated reasons. The petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3). In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

**ORDER:** The motion to reconsider is dismissed, our previous decisions are affirmed, and the petition remains denied.