



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

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

MATTER OF H-J-

DATE: MAY 10, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a martial artist, seeks classification as an alien 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had sustained national or international acclaim, or that she was coming to the United States to work as a martial artist. We dismissed the Petitioner's appeal on alternate grounds, finding that she had not satisfied at least three of the ten regulatory criteria set forth under 8 C.F.R. § 204.5(h)((3)(i)-(x). We also denied a motion to reopen that did not meet the requirements under 8 C.F.R. § 103.5(a)(4), but noted that the Petitioner submitted evidence that established that she intended to continue working in the United States as a martial artist.

The matter is again before us on combined motions to reopen and reconsider. The Petitioner submits a brief along with two previously submitted reference letters, and asserts that the content of these letters was mischaracterized in our previous decision, and that the letters should have been considered as new evidence under 8 C.F.R. § 103.5(a)(2) when they were submitted with the first motion.

Upon review, we will deny both motions.

I. LAW

A motion to reopen is based on documentary evidence of new facts, 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

In her initial filing, the Petitioner sought to establish eligibility through the following criteria: lesser national or international awards; membership; published material about her; judging the work of others; original contributions of major significance; and display of her work. *See* 8 C.F.R. § 204.5(h)(3)(i)-(v). In his denial, the Director found that she had satisfied the requirements of the lesser awards, judging the work of others and display of work criteria, but did not establish her sustained national or international acclaim. The Director also found that the Petitioner did not show that she was coming to the United States to continue working as a martial artist.

On appeal, the Petitioner claimed she met the requirements for the classification through new grounds. Specifically, she indicated that she had received a major internationally recognized award under 8 C.F.R. § 204.5(h)(3), and that she commanded a high salary under 8 C.F.R. § 204.5(h)(3)(ix). In our dismissal, we declined to consider the Petitioner's claim based upon a one time achievement as well as her claim to a high salary, and also reversed the Director's decision regarding the display criterion. In addition, we noted that the record lacked the claimed evidence of the Petitioner's prospective work in the United States.

The Petitioner then filed a motion to reopen our dismissal, asserting eligibility under all of the previously identified criteria. *See* 8 C.F.R. § 204.5(h)(3)(vii). We denied that motion, finding that the evidence submitted was not new or failed to establish eligibility. In response, the Petitioner filed the joint motion to reconsider and reopen now before us.

A. 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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

On motion, the Petitioner asserts that we erred by concluding that two letters submitted in support of her first motion did not qualify as new evidence. She contends that case law cited in that decision, *Matter of Singh*¹ and *Matter of Cerna*², did not apply to her, as "they fail to take into account the special circumstances that exist in China, and that would apply to someone in my position." The Petitioner cites to no law or precedent decision in support of her claim.

Furthermore, the Petitioner has not established that our prior decision was incorrect based on the evidence in the record. Despite finding the evidence submitted did not qualify as new, we reviewed and discussed the letters, finding that they both lacked properly certified translations in accordance

¹ 24 I&N Dec. 331 (BIA 2007)

² 20 I&N Dec. 399 (BIA 1991)

with 8 C.F.R. § 103.2(b)(3), which requires that any document in a foreign language must be accompanied by a full English language translation. The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit properly certified English language translations of the letters, we cannot determine whether the translated material is accurate and thus supports the Petitioner's claims. On motion, she indicates that the authors of the letters provided their own English translations, which she contends should be considered original documents. However, the record lacks evidence supporting the Petitioner's claims regarding who translated the letters and no certification has been provided to comply with 8 C.F.R. § 103.2(b)(3), which would allow us to meaningfully consider the letters as evidence.³

The Petitioner does not cite law or precedent decision in support of her claims, and she does not establish that our previous decision was based on an incorrect application of law or policy, or that it was incorrect based upon the evidence in the record at the time of that decision. Therefore, her motion to reconsider is denied.

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 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."

In support of her motion to reopen, the Petitioner resubmits the two letters referenced above. This evidence, already part of the record and discussed in the previous decision, does not state new facts. Therefore, the filing does not meet the requirements for a motion to reopen.

III. CONCLUSION

The Petitioner has not shown that her motion to reconsider should be granted, since her assertions are not supported by pertinent legal precedent or other legal authority which would establish that our previous decision was based on an incorrect application of law or USCIS policy. And upon consideration of the new facts presented in her motion to reopen, as well as her previous motion and appeal, we do not find that they establish her eligibility as an individual of extraordinary ability.

³ On motion, the Petitioner also attempts to reconcile some of the inconsistencies between the letters and the record that we noted in our previous decision. The lack of properly certified translations of the letters prevents us from addressing her arguments.

Matter of H-J-

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of H-J-*, ID# 1159505 (AAO May 10, 2018)