



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

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

In Re: 25767360

Date: AUG. 29, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a television host, 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.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirement for this classification through evidence of either a one-time achievement or that he meets three of the alternative evidentiary criteria under 8 C.F.R. § 204.5(h)(3).¹ We agreed with the Director's decision and dismissed the Petitioner's 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 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).

On motion, the Petitioner asserts that we overlooked a number of items in our prior decision and that he has satisfied at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3). We note that contrary to the claim that we "completely ignored" the high salary criterion at 8 C.F.R.

¹ The Director determined that the Petitioner met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv).

§ 204.5(h)(3)(ix), as we explained in our decision, we reserved the issue² because the Petitioner would not have been able to “fulfill the initial evidentiary requirement of three criteria.”³

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

As discussed in our prior decision, the evidence regarding the Petitioner’s awards from *Telenedelya* and the Ukraine edition of *Cosmopolitan* does not establish that either award was nationally or internationally recognized *for excellence in the field*. In addition, we explained that none of the Petitioner’s five claimed awards for the reality television show [redacted] identify him as the recipient.

On motion, the Petitioner continues to contend that he received the most votes from the Ukrainian people to win these awards. The Petitioner also explains that *Cosmopolitan* has a large circulation for the Ukrainian edition and, thus, *Cosmopolitan* awards are nationally recognized awards for excellence. In support, the Petitioner submits articles regarding *Cosmopolitan* magazine’s circulation in Ukraine and its popularity worldwide. However, the record does not contain evidence showing that his awards, such as “Man of the Year” and “Telestar,” are nationally or internationally recognized awards *for excellence in the field*.

With regard to the five awards for [redacted] the Petitioner states that he previously submitted a letter from the production company, [redacted] which confirms that he was the leading host and that he played an integral part in receiving the award. However, as we have explained, in order to satisfy the plain language of this criterion, the Petitioner must demonstrate that he was the recipient of the prizes or awards. The record indicates that the show [redacted] received the five awards and not the Petitioner in particular.⁴

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. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

As explained in our prior decision, the Petitioner submitted articles from a variety of sources, some of which did not identify the author as required. Moreover, the Petitioner did not establish the significance of the provided statistics to show that they appeared in professional or major trade publications or other major media.

On motion, the Petitioner states that he submitted more than five articles that included the authors’ names and dates of publication. Many of the remaining articles, however, do not appear to relate to

² See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

³ Because the Petitioner does not meet any additional criteria, we will again reserve this criterion. *Id.*

⁴ See 6 *USCIS Policy Manual, Appendices, supra*, at F.2 (stating that the description of this type of evidence in the regulation indicates that the focus should be on the person’s receipt of the awards or prizes, as opposed to his or her employer’s receipt of the awards or prizes.)

his work in the field, but rather are interviews that ask questions about the “kind of girls” he likes, “the main thing” he looks for “when choosing a car,” and “the best” football league. Regardless, he has not shown how their circulation compares to other publications. Thus, the Petitioner does not establish that these articles were published in professional or major trade publications or other major media.⁵

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

We determined that the letters from colleagues, promotional information from [redacted] channel, and YouTube screenshots did not demonstrate that the Petitioner’s original work rises to the level of artistic or business-related contributions of major significance in the field.

On motion, the Petitioner continues to contend that because he has created and produced several popular TV shows, has been a host on the [redacted] has a large social media following,⁶ and has endorsements and contracts with [redacted] he has demonstrated that he meets this criterion. The issue here is not whether he has been a contributor in some manner, but rather that he must demonstrate that he has made original artistic contributions of major significance in the field of entertainment. Here, the Petitioner does not provide new information or evidence on motion to overcome our prior conclusions.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

On motion, the Petitioner states that “[t]he fact that [redacted] has a distinguished reputation is not relevant because it is the program that matters” and provides a letter from the chief executive officer of [redacted] and copies of [redacted] ratings from 2016, 2017, and 2019. In addition, the Petitioner states that the Ukrainian channel that shows [redacted] is a national organization or establishment “just as a business or political party or a church and thus has a distinguished reputation.”

In the letter from the chief executive officer of [redacted] the author lists the various awards that the [redacted] show has won and asserts that due to these awards and the popularity of the show, [redacted] has a distinguished reputation as it is the production company for the show. With regard to the Petitioner performing in a leading or critical role, the author states that the Petitioner “has always played the role of the protagonist of each episode of the [redacted] show,” which makes him the “leading role in a capacity of the TV host for [redacted]” The author further states that “the production team [for [redacted]] unanimously agreed that they owned [sic] the success to [the Petitioner] due to his professional acting, presentation, comedy skills, and his ability to charm the audiences.” In addition, the author states that the Petitioner “contributed in a significant matter to screen writing efforts,” which is a “critical contribution.” The author also contends that the “seasons when [the Petitioner] was a co-host were the most popular

⁵ See 6 USCIS Policy Manual, Appendices, supra, at F.2 (indicating that evidence of published material in professional or major trade publications or in other major publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics)

⁶ While we acknowledged the error in FN 12 of our previous decision, the Petitioner has not established that his popularity on social media represents an original artistic or business-related contribution of major significance in the field.

seasons out of the entire lifetime of the [redacted] show” and references the show’s ratings from 2016, 2017, and 2019.

The plain language of this criterion requires for the organizations or establishments to have a distinguished reputation, defined as “marked by eminence, distinction, or excellence or befitting an eminent person.”⁷ While the Petitioner was the lead host for [redacted] [redacted] he does not demonstrate how the shows in which he appeared qualify as organizations or establishments consistent with this regulatory criterion. Moreover, while [redacted] [redacted] may have won various awards, the evidence is insufficient to establish that [redacted] [redacted] has a distinguished reputation.

Regarding the Petitioner’s invitation as a representative and liaison for the youth of [redacted] as we explained, the Petitioner did not provide sufficient information to establish that his role was leading or critical and provides no new evidence on motion to overcome this conclusion.

Finally, we note that his role as a presenter at a charity event for Ukraine in New York on [redacted] [redacted] 2023 occurred after the filing of the petition. Eligibility must be demonstrated at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12).

For these reasons, the Petitioner does not establish that he meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales. 8 C.F.R. § 204.5(h)(3)(x).

As we discussed in our prior decision, the letters from [redacted] and [redacted] [redacted] and YouTube screenshots showing “views” of [redacted] were insufficient to establish that the volume of sales or television revenue for [redacted] reflects the Petitioner’s commercial successes relative to others involved in similar pursuits in the performing arts.

On motion, the Petitioner submits additional information about [redacted] including [redacted] [redacted] ratings for the show, and also mentions that he “has been a host of TV programs which has sponsors such as [redacted]” In addition, the Petitioner states that TV companies in the Ukraine do not publish the volume of sales for programs and consider that information confidential.

Although the Petitioner provided additional information such as ratings information for the [redacted] [redacted] for various weeks, it does not overcome our prior conclusion.

Because the new materials submitted on motion do not show proper cause for reopening, we will dismiss the motion to reopen. Moreover, the Petitioner has not established that we misapplied law or policy and that our prior decision was incorrect based on the evidence in the record of proceedings at the time of the decision. Thus, we will also dismiss the motion to reconsider.

⁷ See <https://www.merriam-webster.com/dictionary/distinguished>, cited in 6 *USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policymanual>.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.