U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-T-

DATE: SEPT. 25, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an individual, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 18, 2013. On June 21, 2013, we upheld the Director's decision, and dismissed the appeal. The Petitioner has filed five previous motions. In each of our decisions on those motions, we have upheld our previous decisions. The matter is now before us on the Petitioner's sixth motion, a joint motion to reopen and reconsider. The motion will be denied.

The relevant classification makes visas available to foreign nationals 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 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. We have found that the record supports that conclusion.

On motion, the Petitioner submits a statement and new evidence. For the reasons discussed below, we continue to find that the Petitioner has not established his eligibility for the classification sought. Specifically, the Petitioner has not provided qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or documentation that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the Petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will deny the Petitioner's motion.[1]

[1] The filing of multiple motions is disfavored as it can lead to an unnecessary expenditure of government resources. *Cf. INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)); *see also Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004).

I. ANALYSIS

As acknowledged in our most recent decision, the Petitioner has demonstrated that he meets the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), including evidence that he judged the [redacted] round of the [redacted] in March 2010.[2] The regulation at 8 C.F.R § 204.5(h)(3), however, requires that the Petitioner satisfy at least three of the ten regulatory criteria. In our prior decisions, we have explained why the Petitioner had not satisfied at least two of the remaining criteria.

The Petitioner seeks classification as an attorney of extraordinary ability. In his current motion, he notes that he is not represented, and cites case law for the proposition that courts may have an obligation to treat the positions of *pro se* litigants more liberally with respect to construing filings liberally and considering possible bases of eligibility on their own. The Petitioner specifically states that, because he is a *pro se* petitioner, we should not have deemed abandoned any criteria that he did not discuss in a particular filing. Rather, it is his position that, in each decision, we should have addressed all of the criteria under which the Petitioner has previously asserted eligibility. A review of the record reveals that we have examined each of the criteria under which he has asserted eligibility within our original decision, as well as reviewing multiple criteria in at least two subsequent motions. Within the present filing, the Petitioner raises two criteria; the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi) and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). We evaluate those criteria below, but have also reassessed the entire record and reaffirm our prior conclusions and analysis pertaining to the following bases of eligibility he has affirmed previously: the one time achievement pursuant to 8 C.F.R § 204.5(h)(3) and the criteria at 8 C.F.R § 204.5(h)(3) subparagraphs (i) (nationally or internationally recognized awards), (ii) (membership in associations that require outstanding achievements), (iii) (published material about the Petitioner relating to his work), and (v) (contributions of major significance).

Regarding the Petitioner's authorship of scholarly articles, his original petition filing date is May 14, 2010. Therefore, any qualifying achievements must have occurred on or prior to this date. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further adopts *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that U.S. Citizenship and Immigration Services (USCIS) cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

[2] In our February 18, 2015, decision, we incorrectly stated that the Petitioner did not meet any of the regulatory criteria, rather than explaining that he did not meet at least three. We corrected that inaccuracy, however, in our May 5, 2015 decision. As we unambiguously corrected that confusion in our most recent decision, the Petitioner has not established that the previous language continues to prejudice his newer petition, which the Director can consider once the file is no longer at our office for the adjudication of the Petitioner's motions.

The Petitioner asserts that we should consider his article published in the Summer 2010 issue of the [redacted] under the scholarly articles criterion. In our November 29, 2013, decision, we explained that although the Petitioner signed a copyright agreement on May 1, 2010, the record did not contain any evidence demonstrating that this article was published before the petition's May 14, 2010, filing date; the publication itself indicated only that it was the "summer 2010" edition. The Petitioner does not offer new evidence demonstrating that the article in question appeared in a publication before he filed the petition, as required for a motion to reopen. 8 C.F.R § 103.5(a)(2). Rather, he asserts that we should view the fall 2009 edition, in which he announced his intent to publish his doctoral thesis, and the summer 2010 edition, which contains his article, "jointly (continuation) and separately for evidential purpose for meeting the plain language" of the criterion. The Petitioner cites no legal authority for such an interpretation, as required for a motion to reconsider. 8 C.F.R § 103.5(a)(3). Nevertheless, we have reviewed the entire record pertaining to this criterion and reaffirm that the plain language requires that the actual article, not simply a statement of intent to publish, must have appeared in a qualifying publication as of the date of filing.[3] Finally, while the Petitioner no longer advances this position in his current motion, we reiterate that the "Institutional Repository" of theses at [redacted] which retained his 2008 thesis, is not a professional or major trade publication or other major media. Accordingly, the Petitioner has not established that he met this criterion as of the date of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

In reference to the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner currently relies on his service as an additional representative of the [redacted] to the United Nations. A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. A critical role is evident from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role is relevant to whether the role was critical for the organization or establishment as a whole.

With the current motion, the Petitioner submits letters from the [redacted] requesting a [redacted] Grounds Pass for him that list him as an Additional Representative, as well as the Association By-Laws. Regarding whether the role is leading, the By-Laws reflect that the association has a president, vice-president, secretary, treasurer and an eight-member executive committee headed by a chair. The association also has court, judiciary and intramural committees, each headed by a chair. Several of the grounds pass requests also list a "Main Representative" and multiple additional representatives. The record does not contain an organizational chart or other evidence to demonstrate how an additional representative to the United Nations fits within the overall hierarchy of the association, which includes the positions listed in the By-Laws.

With respect to whether the role is critical to the association, the Petitioner has not detailed the duties he actually performed for the organization and the impact on the association of his performance of

[3] The Director has not had an opportunity to consider the Petitioner's post-filing article as evidence in support of a new petition the Petitioner filed in 2013 because the Petitioner's file has remained at our office for the adjudication of the motions.

those duties to show the manner in which his role was a critical one. Within the present motion, the Petitioner asserts that his longevity as an additional representative beyond a three-year term is representative of his eligibility under this criterion. He states: "The petitioner is one of the only two persons, who have been allowed to continue serving on the position beyond term limit, on an exceptional basis. This exception is the best reflection and demonstration of the significance of the petitioner's role with the association." The Association By-Laws indicate that a committee member's term will consist of a three-year term. The By-Laws do not address representatives to the The Petitioner has not established that additional representatives to the United Nations are committee members who serve three-year terms. Even assuming they are, service beyond the standard term limit does not demonstrate the leading or critical nature of that role. An extension of his term may speak to the quality of his work; however, he provides no support for his assertion that he is only one of two that have ever been allowed to serve beyond a term limit, and that such an exception is demonstrative of his leading or critical role for this organization. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The Petitioner also offers a 2015 email from the addressed to him that includes an association newsletter that focuses on the He asserts the newsletter is circulated to association members on a weekly basis and that he is the co-founder of the newsletter and hand-picked the The Petitioner has not submitted evidence to corroborate these assertions. *Soffici*, 22 I&N Dec. at 165. Even if the Petitioner had submitted evidence to corroborate these assertions, he has not provided evidence or explained the manner in which this demonstrates he has performed in a leading or critical role for the For example, the record does not demonstrate how the newsletter contributes to the success of the association. Moreover, the newsletter covers the week of June 5, 2015. The Petitioner has not established that he founded this newsletter prior to the date of filing in 2010, the date as of which he must demonstrate his eligibility. *See* 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49.

Finally, while the Petitioner's current motion does not request that we consider roles he has held with the we reiterate that he has not demonstrated the leading or critical nature of those roles within the association and some of those positions are not evidence of his eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49. Similarly, the Petitioner has not demonstrated that the 2013 recommendations to next mayor, which do not credit the Petitioner as an author or contributor, are indicative of a role he performed for the Therefore, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

II. CONCLUSION

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 reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of H-T-*, ID# 13626 (AAO Sept. 25, 2015)