U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-T-

DATE: APR. 18, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a lawyer, seeks classification as an "alien of extraordinary ability." *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This 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, Texas Service Center, denied the petition. The Director concluded 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 found on appeal that the record supports that conclusion. We upheld the Director's decision, and dismissed the appeal. The Petitioner then filed six subsequent motions. In each of our decisions on those motions, we have upheld our previous decision.

The matter is now before us on the Petitioner's seventh motion, a joint motion to reopen and reconsider. On motion, the Petitioner submits a statement and new evidence. The Petitioner argues that he meets the categories of evidence at 8 C.F.R § 204.5(h)(3)(vi) and (viii), and that our findings for those criteria should be reconsidered. We will deny the motions.

I. ANALYSIS

A. Motion to Reconsider

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 U.S. Citizenship and Immigration Services (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).

With regard to the category of evidence at 8 C.F.R § 204.5(h)(3)(vi), the Petitioner maintains that the documentation of record satisfies this criterion. The Petitioner previously provided a "Member News" announcement in the issue of the stating that he was The plain language of the regulatory criterion at 8 C.F.R § 204.5(h)(3)(vi) requires "authorship of scholarly articles in the field, in professional or major trade publications or other major media." In our appellate decision, we determined that the "Member News" announcement of just three sentences was not a scholarly article.[1]

Furthermore, in response to the Director's request for evidence, the Petitioner submitted documentation indicating that his doctoral dissertation, entitled was published in the issue of As noted in our previous decisions, the Petitioner's scholarly article was published after the date the petition was filed. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). As the article was published subsequent to the petition's filing date, we determined that it did not establish the Petitioner's eligibility at the time of filing.[2]

In our latest decision, we reaffirmed that the plain language of the regulation at 8 C.F.R § 204.5(h)(3)(vi) requires that the scholarly article, not just a statement of intent to publish, must have appeared in a qualifying publication as of the date of filing. On motion, the Petitioner contends that our interpretation is based on a misreading of the regulation, and that the aforementioned evidence satisfies the plain language requirements of the criterion. The Petitioner states that his doctoral dissertation "had been fully completed" when the issue of the announcement was published and that "the qualifying achievement had occurred." Again, the regulatory criterion at 8 C.F.R § 204.5(h)(3)(vi) requires "authorship of scholarly articles in the field, in professional or major trade publications or other major media." All of the elements of this criterion must be satisfied at the time of filing. Without evidence showing that the Petitioner's dissertation was in a professional publication or other form of major media as of he has not established eligibility for this criterion at the time of filing.

Regarding the category of evidence at 8 C.F.R § 204.5(h)(3)(viii), the Petitioner argues that his service as an "Additional Representative" of the to the meets the requirements of this regulatory criterion. The Petitioner previously submitted a February 2010 letter from the executive director of the requesting a Annual

[1] Specifically, we stated: "Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this instance, the record lacks evidence demonstrating that the Petitioner's 'Member News' announcement was peer-reviewed, contains any references to sources, or otherwise equates to a 'scholarly' article."

[2] 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 his file has remained at our office for the adjudication of the multiple motions.

Pass for herself "as Chief Administrative Officer," for another individual as Main Representative," and for the Petitioner and two others as Additional Representative." In addition, the Petitioner provided subsequent letters from the executive director of the similarly requesting annual grounds passes for 2011 and later, which post-date the filing of the petition. Our September 2015 decision reaffirmed that the documentation of record did not establish that the Petitioner's role for the was either leading or critical. For example, with respect to whether the Petitioner's role was leading, we noted that the Petitioner did not submit an organizational chart or other evidence to demonstrate how an additional representative to the fits within the overall hierarchy of the Additionally, in regard to whether the Petitioner's role was critical to the we indicated that the record did not include details of the duties he actually performed as an additional representative, or demonstrate the impact that his work had on the association, to show that his role was a critical one.

The Petitioner states that he is the "only and first-ever official representative who is formally accredited to both the Headquarters in and the Office in and entrusted to cover both for the association." The Petitioner, however, does not explain how our previous findings under the regulatory criterion at 8 C.F.R § 204.5(h)(3)(viii) had legal errors or misstatements of fact that would warrant reconsideration.

With regard to the criteria at 8 C.F.R § 204.5(h)(3)(vi) and (viii), the Petitioner has offered no precedent decisions or legal citations to establish that our decision was based on an incorrect application of law, regulation, or USCIS policy. In addition, the motion does not establish that our latest decision was incorrect based on the evidence of record at the time of the decision. Therefore, the motion to reconsider is denied.

B. Motion to Reopen

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

With the current motion, the Petitioner submits a September 2015 letter from the executive director of the to the Office at requesting a grounds passes for himself "as Chief Administrative Officer," for another individual as "President of the organization," and for the Petitioner as Additional Representative." In addition, the Petitioner provides his grounds pass for the Office at a webpage identifying himself as the "Additional Representative" to the Office at and three webpages with information about the Office at The Petitioner's recent appointment as additional representative to the Office at post-dates the filing of the petition. Again, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, we cannot consider any appointments after May 14, 2010, the date the petition was

filed, as evidence to establish the Petitioner's eligibility at the time of filing. Regardless, there is no documentary evidence demonstrating that the Petitioner's role as an additional representative to offices in and is leading or critical to the

The motion to reopen does not include any new facts or other documentary evidence to overcome the grounds underlying our previous findings. Accordingly, the motion to reopen is denied.

II. CONCLUSION

In this matter, the Petitioner has not demonstrated that he meets at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3). As the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision, and the motion to reconsider is not supported by any pertinent precedent decisions or legal citations that demonstrate our latest decision was based on an incorrect application of law or USCIS policy, the motions are denied. 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# 16278 (AAO Apr. 18, 2016)