U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-J-

DATE: APR. 26, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a radiation oncologist, seeks classification as an individual of extraordinary ability in the sciences. 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 Form I-140, Immigrant Petition for Alien Worker. We dismissed the Petitioner's appeal, and she has filed a motion to reopen and a motion to reconsider. Upon review, we will deny the motions.

I. LAW

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). A petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner submits qualifying evidence under at least three criteria, we will then determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[1]

[1] *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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 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 dismissing the appeal, we determined that the Petitioner satisfied three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) – the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv), the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), and the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix). As a result, we conducted a final merits determination and concluded that: she did not attain sustained national or international acclaim, her achievements have not been recognized in the field through extensive documentation, and she is not one of that small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

In support of her motion to reopen, the Petitioner submits a reference letter from [redacted] medical director at the [redacted] and her updated curriculum vitae. [redacted] states that the Petitioner joined [redacted] in September 2016 and explains why he selected her to do so. In addition, [redacted] indicates that the Petitioner was invited to present her recent study at a conference in October 2016, which will be published in early 2017. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). As these events including the updated information on her curriculum vitae, occurred after the filing of her petition, they will not be considered as evidence of her eligibility. Moreover, while [redacted] concludes that the Petitioner is one of a very few oncology physicians that have knowledge of proton therapy and clinical skills to prescribe and manage treatment, he did not demonstrate that such traits and skills have garnered the Petitioner the required national or international acclaim for this highly restrictive classification. Accordingly, the evidence that the Petitioner submits on motion does not overcome the grounds of our decision.

Regarding the motion to reconsider, the Petitioner claims that we misapplied the "preponderance of the evidence" standard. In addition, the Petitioner highlights her accomplishments, which we evaluated in our final merits determination, and discusses [redacted] letter. 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). We do not consider new facts or evidence in a motion to reconsider. A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or Department of Homeland Security policy. Here, the Petitioner does not explain or establish how our decision applied a higher standard than "preponderance of the evidence." In addition, the Petitioner does not address the issues raised

in our final merits determination. For these reasons, the Petitioner has not established that we incorrectly applied law or policy in our decision.

III. CONCLUSION

The Petitioner's motions do not overcome the grounds in our prior decision, and she has not shown that she qualifies as an individual of extraordinary ability.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of B-J-*, ID# 357284 (AAO Apr. 26, 2017)