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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-G-K-

DATE: FEB. 2, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a professional engineer, seeks classification as an individual of extraordinary ability in the sciences. *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, Nebraska Service Center, denied the petition, concluding that the Petitioner had not met 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 3 of 10 listed regulatory criteria. We dismissed the Petitioner's subsequent appeal.

The matter is now before us on a joint motion to reopen and reconsider. The Petitioner maintains that he meets more than three criteria based on his awards, association memberships, published material, judging, original contributions, leading role, and high salary. In addition, he submits a self-published book and information about [redacted] We will deny the motion.

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).

The Petitioner maintains that his Professional Engineer (P.E.) title and license are nationally or internationally recognized prizes or awards for excellence in the field of endeavor under the criterion at 8 C.F.R § 204.5(h)(3)(i). He cites to various state and federal court decisions, but the cited decisions are not relevant to the immigrant visa classification sought by the Petitioner. Furthermore, none of the cases he identified found that a P.E. title and license are nationally or internationally

recognized prizes or awards for excellence in the field. While the Petitioner's credentials demonstrate proficiency in his occupation and authorize him to practice in Michigan and Wisconsin, he has not established that they constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

With respect to the regulatory criterion at 8 C.F.R § 204.5(h)(3)(ii), the Petitioner repeats earlier arguments that his membership in the meets this criterion. He cites to several U.S. Supreme Court and district court decisions, but again, the cited decisions are not relevant to this regulatory criterion or the immigrant visa classification he seeks. These decisions, which relate to prior involvement in litigation in U.S. federal courts with no discussion of the society's admission requirements, do not demonstrate that the Petitioner satisfies the elements of this criterion. Without evidence showing that requires outstanding achievements of its members, as judged by recognized national or international experts, the Petitioner has not established that he meets this criterion.

The Petitioner contends that we erred in our analysis of two articles he submitted under the regulatory criterion at 8 C.F.R § 204.5(h)(3)(iii) by requiring that they be about him. The plain language of the regulatory criterion requires "published material about the alien." Articles that are not about the Petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). The articles in are about students working on models to predict flooding in the The Petitioner is not mentioned in first article entitled, ' study to help predict flooding." In the second article, entitled ' students continue to study area flooding," the Petitioner is one of several individuals named in an accompanying photograph caption as part of the team, but he is not discussed in the article.

As support for his contention that our analysis under the criterion at 8 C.F.R § 204.5(h)(3)(iii) was in error, the Petitioner cites *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995). In *Muni*, the court specifically stated that "all [the individual] need show is that there is '[p]ublished material about [him] in professional or major trade publications or other major media, relating to [his] work in the field for which classification is sought.' 8 C.F.R. § 204.5(h)(3)(iii)." *Id.* at 445. In addition, the court noted that the articles need not reference the individual as a "star" as long as they are "about" him. *Id.* No part of *Muni* indicates that articles do not have to be "about" the petitioner, a plain language requirement set forth at 8 C.F.R. § 204.5(h)(3)(iii). Accordingly, the holdings in *Muni* do not contradict our finding that the submitted articles are not "about" the Petitioner.[1] Furthermore,

[1] We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court we are not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration, the analysis does not have to be followed as a matter of law. *Id.* at 719.

we determined that [redacted] readership numbers of 11,000 to 15,000 did not elevate the newspaper to a form of major media.

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence of an individual's participation, either individually or on a panel, as the judge of others in the field. The Petitioner contends he meets this criterion based on his position with [redacted] in which he provided advice and guidance on environmental and storm water policies, rules, regulations, and guidelines, as well as performing environment review, analysis, and coordination of transportation improvement projects. In our appellate decision, we found that, although the Petitioner served on review committees that made recommendations regarding compliance with relevant rules and regulations, he did not demonstrate that he actually served as a judge of others consistent with the plain language of this regulatory criterion. We noted that "not every instance of reviewing work as part of one's job duties falls under this criterion."

On motion, the Petitioner contends that the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) "does not require the selection and participation process for serving . . . be indicative of national or international acclaim." Our appellate decision, however, did not mention or impose such a requirement under this criterion. In addition, the Petitioner notes that his reviews did not involve "internal review of students (professor) or coworkers (supervisor)." He further argues that his activities are consistent with *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010); *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994); and *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). In contrast to aforementioned legal decisions, our findings under the judging criterion in this matter were not based on the Petitioner's inability to demonstrate that his participation "was the result of his having extraordinary ability" or indicative of "national or international acclaim." The Petitioner has not demonstrated error in our finding regarding this criterion.

The regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The Petitioner argues that his work on a team to assist [redacted] Michigan, in creating a model to predict flooding meets this criterion. The Petitioner states that his work "laid down the foundation of coming up with a flood prediction model that would give '. . . residents and [redacted] more information to better handle the flooding.'" While the Petitioner was part of the team that worked on the model, he did not establish the impact of the model or project beyond [redacted] For example, the record does not demonstrate that the model has been widely applied in the civil engineering field, that his report has been extensively cited by other engineers, or that his work otherwise rises to the level of an original scientific contribution of major significance in the field. Accordingly, the Petitioner has not shown that our determination for this criterion was incorrect.

With regard to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner maintains that his role as an assistant regional storm water and erosion control engineer for [redacted] in the southeast region meets this criterion. We determined that, based on the Petitioner's position within the agency's organizational structure, he had not established that he performed in a leading

role for [redacted] or its component offices.[2] In response, the Petitioner offers the dictionary definition of the word "leading" as "providing direction or guidance." He contends that overseeing storm water and erosion control practices; providing advice, guidance, and methods on environmental and storm water policies, rules, regulations, and guidelines; and performing environment review, analysis, and coordination of transportation improvement projects are duties consistent with the definition of leading. When compared to other positions identified in [redacted] hierarchy, however, the Petitioner's role as an engineer falls short of a leading role consistent with the plain language of this regulatory criterion. Furthermore, although the record includes evidence of the Petitioner's participation on review committees, he did not demonstrate how his position is critical to [redacted] or the southeast region sub-office. The Petitioner, for example, did not show how his role as an assistant engineer in a sub-office influenced or impacted [redacted] overall. Lastly, while the Petitioner submitted a screenshot regarding an overview of [redacted] including its background and objectives, the submitted documentation does not demonstrate that the organization has a distinguished reputation. For these reasons, the Petitioner has not demonstrated his eligibility under 8 C.F.R. § 204.5(h)(3)(viii).

Finally, the Petitioner contends that we erred in our interpretation of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ix), and that we did not consider his supplemental pay rate of $1 per hour. The record contains paystubs indicating that the Petitioner is compensated at a rate of $27.97 per hour, including his supplemental pay. Our appellate decision noted that this rate reflected "an approximate bi-weekly salary of $2200." As the Petitioner did not compare his salary to other professional engineers, we determined that he had not shown a high salary or other significantly high remuneration for services in relation to others in the field. On motion, the Petitioner cites to *Buletini v. INS,* 860 F. Supp. at 1232, n.12, which stated that USCIS "must intend that the salary of the [petitioner] be judged in relation to others who are in comparable circumstances." We do not contest this principle; however, in the present matter, the record does not include occupational wage data or salary survey results for professional engineers demonstrating that the Petitioner's salary was high relative to others in his field. Accordingly, the Petitioner has not shown that our determination for this criterion was incorrect.

With regard to the regulatory criteria discussed above, the legal citations offered by the Petitioner do not establish that our appellate findings were 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.

[2] The record contains [redacted] organizational structure showing that it has three executive offices and five divisions, including the [redacted] in which the Petitioner is employed. Under [redacted] there are four offices, in which the Petitioner works in the southeast region sub-office under the regional office section. Within the southeast region, there are 10 positions, including 1 supervisor, 2 leads, and 2 engineers, one of which is the Petitioner.

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.

With the current motion, the Petitioner submits information from the online encyclopedia *Wikipedia* stating that [redacted] has a circulation of 11,439 on weekdays, 11,855 on Saturdays, and 14,723 on Sundays. We note that there are no assurances about the reliability of the content from this open, user-edited website.[3] *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Nonetheless, the aforementioned readership numbers do not elevate [redacted] to a form of major media relative to other newspapers, nor do the circulation figures affect our finding that the articles in question were not about the Petitioner. Accordingly, the information provided from *Wikipedia* does not overcome our previous findings that the Petitioner does not meet the regulatory criterion at 8 C.F.R § 204.5(h)(3)(iii).

In addition, the Petitioner provides a copy of a self-published book he authored entitled [redacted] He contends that the book satisfies the regulatory criterion at 8 C.F.R § 204.5(h)(3)(v). The Petitioner's book was published in 2016 after the filing date of the Form I-140, Immigrant Petition for Alien Worker, on January 5, 2015. 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). Regardless, the Petitioner has not offered supporting evidence indicating that his book constitutes an original scientific contribution of major significance in the field of civil engineering. Therefore, the Petitioner has not overcome our finding that he does not meet the regulatory criterion at 8 C.F.R § 204.5(h)(3)(v).

As the evidence does not demonstrate eligibility, the motion to reopen is denied.

II. CONCLUSION

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 does not demonstrate our latest decision was based

[3] Online content from *Wikipedia* is subject to the following general disclaimer:

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See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on January 31, 2017, copy incorporated into the record of proceedings.

on an incorrect application of law or USCIS policy, the motions are denied. The Petitioner has not met his 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).

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of I-G-K-*, ID# 194293 (AAO Feb. 2, 2017)