U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-K-

DATE: SEPT. 14, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a software developer, 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 Petitioner's Form I-140, Immigrant Petition for Alien Worker, and we dismissed his subsequent appeal.[1] The matter is now before us on 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). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 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.[2]

---

[1] *See Matter of T-K-*, ID# 237817 (AAO Mar. 7, 2017).

[2] *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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

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. BACKGROUND

In dismissing the appeal, we determined that the Petitioner satisfied only two of the regulatory criteria: awards under 8 C.F.R. § 204.5(h)(3)(i) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). We found that the Petitioner did not, as claimed on appeal, demonstrate a one-time achievement under 8 C.F.R. 204.5(h)(3) or meet the criteria relating to published material under 8 C.F.R. § 204.5(h)(3)(iii) and original contributions under 8 C.F.R. § 204.5(h)(3)(v). On motion, the Petitioner presents additional documentation and argues that he established eligibility for at least three criteria.

III. ANALYSIS

A. Motion to Reopen

The Petitioner contends on motion that his salary from his recent employment satisfies the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix). As supporting evidence, the Petitioner provides a September 2016 job offer from [redacted] indicating a commencement date in November 2016, copies of paystubs from December 2016 to March 2017, and comparable salary documentation. The record indicates that the Petitioner filed his petition in April 2016. 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). Although he offers evidence regarding events occurring after the filing of his petition, the Petitioner did not show that he commanded a high salary or significantly high remuneration for services in relation to others prior to or at the time he filed his petition. Accordingly, the Petitioner did not establish that he meets the high salary criterion.

B. Motion to Reconsider

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). The Petitioner argues that his television interviews and video clips meet the published material criterion. While the Petitioner presented a translation of a [redacted] interview that was also reproduced on [redacted] the translator's signature and date are blank. In addition to not being certified, the translator did not submit a complete and accurate translation of the video clip as the translator indicated that the "video starts showing [the Petitioner's] presentation" and the "video starts showing the demo of [redacted] appointment process" without offering the transcription of the entire video. Any document in a foreign language

must be accompanied by a full English language translation. 8 C.F.R. 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because Petitioner did not submit a properly certified English translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. Moreover, it appears the video relates to [redacted] rather than about published material about the Petitioner. Further, although he listed the title, date, and author in his initial cover letter, the Petitioner did not provide evidence to support his claims regarding this information.

Similarly, the Petitioner submitted a screenshot and translation of a video of him promoting his software application, [redacted] on [redacted] that was also posted on [redacted] While the translation is signed and dated by the translator, it is not certified as required under 8 C.F.R. 103.2(b)(3). Further, the promotional video is regarding [redacted] rather than being published material about the Petitioner. Moreover, the Petitioner did not offer evidence supporting his claims regarding the title, date, and author of the material.

The Petitioner also indicates that "it is unclear why the other scholarly publications are not counted in the authorship criterion." While we did not discuss every scholarly publication submitted, we determined in our previous decision that the Petitioner, in fact, met the authorship criterion and listed an example of a journal article that he authored.[3]

In addition, the Petitioner argues that although he previously claimed the provisions for comparable evidence, we did not analyze this request in our decision. The regulation at 8 C.F.R. § 204.5(h)(4) provides that "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." Thus, the petitioner must explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). In his original appeal brief, the Petitioner stated that he provided his authorship of software applications in information technology as comparable evidence to the scholarly articles criterion. As indicated above, we determined that the Petitioner established that he authored scholarly articles in professional publications thereby meeting the scholarly articles criterion without the need to address whether his documentation qualified as comparable evidence. Moreover, we analyzed the significance of his software applications, including his reference letters, in our determination that his evidence did not demonstrate that he met the original contributions criterion.

Finally, the Petitioner requests that we provide him with any updates on any purported crimes by the Director,[4] and he enquires about refunding of his premium process service fee. As indicated in our prior decision, the record reflects that the Petitioner received a copy of the Director's decision, and

[3] If the Petitioner had met at least three criteria, we would have then evaluated all of his authored material as part of a final merits determination. *See Kazarian*, 596 F.3d at 1115.

[4] On appeal, the Petitioner asserted that the Director engaged in "intentional misconduct" by mailing the decision to the wrong address so he could not file a timely appeal and by making errors in his decision.

he filed a timely appeal. Further, we reviewed the Petitioner's appeal on a *de novo* basis and found the Petitioner did not establish eligibility for the immigration benefit. Finally, the issue of premium processing fee refunds is not within our jurisdiction.

IV. CONCLUSION

The Petitioner has not offered new facts demonstrating his eligibility for the benefit sought, nor has he established that our previous decision was incorrect.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of T-K-*, ID# 559427 (AAO Sept. 14, 2017)