U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-W-B-S-

DATE: JULY 11, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an attorney, mediator, journalist, and author, seeks classification as an individual of extraordinary ability. *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 of the Texas Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which require documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). We dismissed the appeal, concluding that the Petitioner had only met two of the required criteria.[1]

The matter is now before us on a motion to reopen and a motion to reconsider our previous decision. On motion, the Petitioner asserts that the evidence in the record demonstrates that he meets the criteria for awards at 8 C.F.R. § 204.5(h)(3)(i) and membership at 8 C.F.R. § 204.5(h)(3)(ii) in addition to the judging and scholarly articles criteria that had previously been established.

Upon *de novo* review, we will deny the motions to reopen and reconsider.

I. LAW

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen

[1] Our most recent decision in this matter is *Matter of I-W-B-S-*, ID# 668002 (AAO Dec. 19, 2017)

to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). A petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Where a petitioner submits qualifying evidence under at least three criteria, we will 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. *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).

II. ANALYSIS

The Petitioner states that he qualifies for this classification as an individual with extraordinary ability as a multilingual attorney, journalist, author, and mediator. At the time of filing, he was serving as a volunteer mediator with the Judicial Circuit of Florida in [2] In our previous decision, we held that the Petitioner met two criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The Petitioner has filed a motions to reopen and reconsider our previous decision and asserts that he also meets the criteria for awards at 8 C.F.R. § 204.5(h)(3)(i) and membership at 8 C.F.R. § 204.5(h)(3)(ii).

A. 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).

A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. The Petitioner does not cite binding precedent decisions or other legal authority establishing that we or the director incorrectly applied the pertinent law or agency policy and that the prior decision was erroneous based on the evidence of record at the time. Therefore, he does not meet the applicable requirements for a motion to reconsider.

B. Motion to Reopen

A motion to reopen is based on documentary evidence of new facts. 8 C.F.R. § 103.5(a)(2). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new"

[2] The Form I-140 petition lists the Petitioner's occupation as "student." We noted in our previous decision that the record does not contain evidence, such as a statement from the Petitioner, as required by 8 C.F.R. § 204.5(h)(5), indicating how he intends to continue his work in the area of expertise in the United States. The Petitioner has not submitted this documentation on motion.

fact, nor does it mirror the Board of Immigration Appeals' (the Board) definition of "new" at 8 C.F.R. § 1003.23(b)(3) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

On motion, the Petitioner submits evidence to support his contention that he satisfies two additional criteria: the receipt of lesser national or international awards and membership. 8 C.F.R. § 204.5(h)(3)(i), (ii). A number of documents accompany the motion, most of which have been previously submitted and do not constitute new facts.

To satisfy the requirements of 8 C.F.R. § 204.5(h)(3)(i), the Petitioner must establish that he received a lesser nationally or internationally recognized prize or award for excellence in his field of endeavor. He bases his claim upon a certificate from the [redacted] for [redacted] indicating that a special report on which he worked ranked second in the category of television reporting at the 10th [redacted] in 2012.

In support of his motion, the Petitioner submits new evidence related to [redacted] to supplement the information on the award already in the record, consisting of screenshots of three websites. He provides the history portion of the [redacted] website and two articles related to the [redacted] event at which the certificate was presented. Upon review, the documents the Petitioner has submitted are translations of foreign language websites, and the record lacks both certifications from the translator and copies of the original source. 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 the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

Furthermore, the record lacks evidence demonstrating that the certificate awarded to the Petitioner is nationally or internationally recognized. He has also not provided information about the award, such as selection criteria, to show that it is for excellence in his field of endeavor. As such, the Petitioner has not established that the certificate from [redacted] meets the requirements of the lesser awards criterion. 8 C.F.R. § 204.5(h)(3)(i).

In addition, the Petitioner submits a letter from [redacted] the Mediation Program Coordinator for the [redacted] Judicial Circuit Court of Florida, congratulating the Petitioner on receiving the 2017 [redacted] She expresses her appreciation for his having served the court program with over 425 cases in the past two years. [redacted] states that "[t]his award is very prestigious" and that it "was given to [the Petitioner] out of 30 County Mediators who are former judges, law professors, attorneys, and other professionals." She further adds that the award was given for "carrying out more cases than any other mediator in the program in 2017 with a high degree of professionalism."

We note that the Petitioner received this award after the petition was filed in 2016, and thus it does not serve to establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). Additionally, the record does not contain evidence establishing that this award receives national or international recognition. Therefore, the Petitioner has not met the requirements of the lesser awards criterion.[3]

The Petitioner also contends that he has submitted documentation of his membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii). In his brief, he indicates that his receipt of the [redacted] certificate satisfies the requirement of this criterion that admission be judged by recognized experts in the field. However, the record does not identify an association into which his receipt of the certificate admits him or establish that outstanding achievements are required of members. Furthermore, the Petitioner has not submitted evidence to support his claim that the judges who awarded the [redacted] certificate are recognized national or international experts in their fields. As such, the Petitioner has not submitted evidence establishing that he meets this eligibility criterion.

III. CONCLUSION

The motion to reconsider is denied because the Petitioner has not established that our decision was based on an incorrect application of law or policy. The motion to reopen is denied because the Petitioner has not established that he meets the initial requirements for the classification sought in 8 C.F.R. § 204.5(h)(3).

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of I-W-B-S-*, ID# 1372038 (AAO July 11, 2018)

[3] The Petitioner also submitted a congratulatory letter from the governor of Florida, thanking him for two years of service as a *guardian ad litem* volunteer. This does not represent an award under the plain language of the criterion.