U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-X-

DATE: JUNE 15, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a clinical investigator, seeks classification as an individual of extraordinary ability in education. *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 revoked the approval of 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 10 regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)(-(x). We upheld the decision on appeal.[1]

The matter is now before us on a motion to reopen and reconsider our previous decision. On motion, the Petitioner submits additional documentation, asserting that the record resolves the discrepancies noted previously and demonstrates that he meets at least three criteria for this classification under 8 C.F.R. § 204.5(h)(3).

Upon *de novo* review, we will deny the joint motion 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 to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). A petitioner can demonstrate a

[1] Our most recent decision in this matter is *Matter of H-X-*, ID# 466601 (AAO Nov. 9, 2017)

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) (including items such as awards, memberships, and published material in certain media). 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

In our prior decision, following receipt of the Petitioner's response to our notice of intent to dismiss (NOID), we upheld the Director's decision revoking the approval of the Petitioner's Form I-140 petition. We held that the petition was properly revoked because the record did not reflect that the Petitioner met at least three criteria under 8 C.F.R. § 204.5(h)(3). Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the Director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

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 decisions were erroneous based on the evidence of record at the time. Therefore, he has not met the requirements for a motion to reconsider.

B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean facts that are relevant to the issue(s) 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." Here, the majority of the evidence the Petitioner submits on motion was submitted previously and does not meet the requirements of a motion to reopen.

In our previous decision, we held that the Petitioner met only the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). On motion, the Petitioner claims that he meets the following criteria: awards at 8 C.F.R. § 204.5(h)(3)(i), membership under 8 C.F.R. § 204.5(h)(3)(ii), published material under 8 C.F.R. § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v), and display under 8 C.F.R. § 204.5(h)(3)(vii). However, on motion, the Petitioner has not submitted new evidence related to any of the claimed eligibility criteria, save membership under 8 C.F.R. § 204.5(h)(3)(ii).[2]

The Petitioner asserts that his membership with the requires outstanding achievements of its members. The Petitioner submits the bylaws for the which indicate that a person must be nominated in writing by two members of the society. Section 3 of the bylaws indicates that members must have certain educational or experiential backgrounds in chemical sciences for admission, but this does not demonstrate that outstanding achievements are required for membership. The Petitioner has not established that he meets this criterion.

III. CONCLUSION

The Petitioner has not demonstrated that he meets at least three of the criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). The motion to reconsider is denied because the Petitioner has not established that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy. The motion to reopen is denied because the new evidence the Petitioner submitted does not establish that he meets the initial requirements for the classification sought, nor has he resolved all the inconsistencies described in our prior decision.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of H-X-*, ID# 1227778 (AAO June 15, 2018)

[2] The Petitioner also submitted new evidence related to discrepancies in the record that we noted in our previous decision. While the new evidence overcomes concerns related to the Petitioner's authorship of an article on monokines, we had already found he has established eligibility under the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). The other evidence submitted related to discrepancies that did not relate to eligibility criteria; therefore, we will not consider them here.