U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-O-R-D-L-

DATE: MAR. 5, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a former professor 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 denied the petition and two subsequent motion decisions, 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 and reaffirmed our findings in seven subsequent motion decisions.[1]

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

Upon *de novo* review, we will deny the motion to reopen.

I. LAW

A motion to reopen is based on documentary evidence of *new facts*. 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 A-O-R-D-L-, ID# 592759 (AAO Oct. 4. 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.

II. ANALYSIS

In our previous decision denying his seventh motion, we held that the evidence the Petitioner submitted did not include properly certified English translations under 8 C.F.R. § 103.2(b)(3). We further held that independent of the issue regarding the translation of these documents, this evidence did not establish the Petitioner's eligibility for the benefit sought. On Motion, the Petitioner states that his internationally recognized prizes for excellence demonstrate the he meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i).

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" 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 ones 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."

On motion, the Petitioner submits the diploma of merit and a letter , thanking the Petitioner for his work over the past eight years. The Petitioner had previously submitted these documents and therefore, they do not constitute new facts under 8 C.F.R. § 103.5(a)(2). Accordingly, the Petitioner has not met the filing requirements for a motion to reopen.

III. CONCLUSION

The Petitioner has not submitted new evidence and, therefore, has not satisfied the requirements of a motion to reopen.

ORDER: The motion to reopen is denied.

Cite as *Matter of A-O-R-D-L-*, ID# 1083126 (AAO Mar. 5, 2018)