U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-A-A-E-

DATE: JULY 2, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an accountant, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not shown that he met any one of the ten initial evidentiary criteria, of which he must meet at least three. After a complete review of the Petitioner's arguments and evidence submitted, we dismissed the appeal, concluding that he had not established that he meets at least three criteria.[1]

The matter is now before us on a motion to reopen and a motion to reconsider our previous decision.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

[1] Our most recent decision in this matter is *Matter of S-A-A-E-*, ID# 1232896 (AAO June 15, 2018).

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). 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 meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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); *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 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.

II. ANALYSIS

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). In an addendum to his motion, dated June 18, 2018, the Petitioner states:

> The Service's failure to review and evaluate the three additional regulatory areas under 8 CFR 204.5(h)(3) to include 8 CFR 204.5(h)(3)(iii); 8 CFR 204.5(h)(3)(iv); and 8 CFR 204.5(h)(3)(vi) that were addressed in the Petitioner's response to the Request for Evidence establishes that the decision was based on an incorrect application of Service policy under 8 C.F.R. § 103.5(a)(3).

In the factual background section of his motion brief, he repeats his claim that our decision issued on June 15, 2018, failed to address the three criteria identified above, relating to published material about

him, his experience judging the work of others, and scholarly articles he has written. The Petitioner does not identify any other errors in our prior decision.

Review of the record does not support the Petitioner's assertions. Our prior decision specifically addressed the eligibility criteria identified in his motion. We found that he failed to identify any published material about him to support his claim to eligibility. We also determined that the Petitioner's work as an auditor and accountant did not satisfy the regulatory requirements for the judging criterion. Finally, due to the lack of properly certified translations and missing publication evidence, we held that the Petitioner had not met the scholarly articles criterion.

As we did address the criteria the Petitioner claims we overlooked and he does not identify any other errors, he has, therefore, not established that our prior decision was incorrect based on the evidence in the record. Therefore, the motion to reconsider is denied.

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). On motion, the Petitioner resubmits evidence he had previously provided in support of the earlier motion on the Director's decision. Upon review of the record in its totality, the Petitioner has not presented either new facts or evidence in support of his eligibility for the classification. As such, he has not satisfied the requirements for a motion to reopen.

III. CONCLUSION

The motion to reconsider is denied as the Petitioner has not asserted that our prior decision was based on an incorrect application of law or policy. The motion to reopen is denied because the Petitioner has not submitted new facts or evidence in support of the motion.

The motions will be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of S-A-A-E-*, ID# 3289321 (AAO July 2, 2019)