U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-L-

DATE: MAR. 5, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an artist,[1] seeks classification as an individual of extraordinary ability in the arts. *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 certified the denial to us.[2] We affirmed the Director's denial in our certification decision.[3] We found that the Petitioner did not establish his eligibility because he had satisfied two criteria relating to published material and display of his work, 8 C.F.R. § 204.5(h)(3)(iii), (vii), but not at least three of the ten criteria listed in 8 C.F.R. § 204.5(h)(3)(i)-(x). *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (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). We subsequently denied his combined motions to reconsider and reopen the matter.[4]

The Petitioner has now filed his second combined motions to reconsider and reopen the proceeding.[5] He presents additional documentation and asserts that he has satisfied a third criterion, the original contributions of major significance in the field criterion under 8 C.F.R. § 204.5(h)(3)(v). He further maintains that he has established his sustained national or international acclaim in the field.

Upon review, we will deny the Petitioner's second combined motions.

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[1] In his August 2018 statement, the Petitioner indicates that he is "a artist."

[2] Previously, we remanded the proceeding to the Director twice to allow him to issue a new decision to fix his errors.

[3] *See Matter of B-L-*, ID# 880078 (AAO Nov. 14, 2017).

[4] *See Matter of B-L-*, ID# 1320289 (AAO July 24, 2018).

[5] While his Form I-290B, Notice of Appeal or Motion, indicates that he is filing a motion to reconsider our last decision, the accompanying brief states that he is filing a motion to reopen the proceeding. He has also submitted additional documentation in support of the instant filing. As such, we will consider the submission as his combined motions to reconsider and reopen the matter.

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.

In addition, the regulation specifies motion filing requirements, providing that a petitioner must submit "a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed."

II. ANALYSIS

The Petitioner has not submitted "a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." He therefore has not met the motion filing requirements. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C); 8 C.F.R. § 103.5(a)(4). In the alternative, for the reasons we will discuss below, he has not shown that we should grant his combined motions.

A. Motion to Reconsider

A motion to reconsider must establish that our previous 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). It 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 (DHS) policy.

On motion, the Petitioner argues that the additional documents he has presented and his previously submitted materials constitute "[e]vidence of [his] original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v). He, however, does not specifically claim that we erred or point to any errors in our previous decision. Accordingly, he has not demonstrated, or alleged, that our previous decision was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record at the time. We will therefore deny his motion to reconsider the matter.

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."

In our previous decision denying the Petitioner's first combined motions, we discussed the documents in the record at the time, including letters from other artists praising his work. We concluded that while the letters identify his art work, they "do not identify a specific contribution he made" or "indicate [his] impact on the field." We reiterated, as we had initially explained in our decision dismissing his appeal, "reference letters that do not provide specifics regarding the Petitioner's contributions and their impact on others in the field are insufficient" to show he satisfies the original contributions of major significance criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

On motion, the Petitioner submits an August 2018 statement as well as two letters from fellow artists, [redacted] and [redacted] respectively. These documents discuss the Petitioner's biographical information and his work. All three individuals reference his 1990s installation, but each calls it by a different name. The Petitioner states that it was "Carton Generation," [redacted] says it was "Canton Generation," and [redacted] claims it was "Cartoon Generation." The Petitioner has presented inconsistent evidence relating to his art work and must "resolve the inconsistencies by independent objective evidence." *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Regardless, similar to evidence that was already in the record, the newly submitted materials do not demonstrate that the Petitioner meets the criterion under 8 C.F.R. § 204.5(h)(3)(v). These documents, while praising the Petitioner, do not specifically articulate how the impact and influence of his work rise to the level of contributions of major significance in the field. Letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion. *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8-9 (Dec. 22, 2010), https://www.uscis.gov/legal-resources/policy-memoranda. Accordingly, the Petitioner has not stated new facts or supported them with documentary evidence. We will therefore deny his motion to reopen the matter.

III. CONCLUSION

The Petitioner's combined motions will be denied because they do not meet the motion filing requirements. *See* 8 C.F.R. § 103.5(a)(1)(iii)(C), (a)(4). In the alternative, his motion to reconsider the matter will be denied because he has not established that our previous decision was based on an incorrect application of the law, regulations, or USCIS or DHS policy. His motion to reopen the proceeding will also be denied because he has not submitted new evidence demonstrating that he meets the initial requirements for the classification.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of B-L-*, ID# 2119400 (AAO Mar. 5, 2019)