U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-S-W-

DATE: MAR. 14, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner seeks classification as an individual of extraordinary ability in operational safety. This first preference classification makes immigrant visa 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 Petitioner's Form I-140, Immigrant Petitioner Alien Worker, finding that he did not satisfy the initial evidentiary criteria applicable to individuals of extraordinary ability, either a major, internationally recognized award or at least three of ten possible forms of documentation. We dismissed his subsequent appeal concluding that although the Petitioner met three criteria, he did not establish sustained national or international acclaim, that he is among the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.[1]

The matter is now before us on a motion to reconsider and a motion to reopen. Upon review, we will deny the motions.

I. LAW

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). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner submits qualifying evidence under at least three criteria, we will then determine whether the totality of the record shows sustained national or international

[1] *See Matter of M-S-W-*, ID# 1409681 (AAO June 19, 2018).

acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[2]

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.[3]

II. BACKGROUND

In dismissing the appeal, we determined that the Petitioner satisfied three of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). Moreover, we conducted a final merits determination in which we reviewed the record as a whole, including the evidence the Petitioner submitted under other claimed criteria.[4] Based on this review, we found that the Petitioner did not establish his sustained national or international acclaim, that he is among the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

In the Petitioner's motion to reconsider, he argues that we heightened the evidentiary standard and did not address much of his documentation. In his motion to reopen, the Petitioner presents additional documentation relating to his written work.[5]

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[2] *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).

[3] The Petitioner did not include the required "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).

[4] The other claimed criteria were: awards under the regulation at 8 C.F.R. § 204.5(h)(3)(i), memberships under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), published material under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), and original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

[5] Although the Petitioner references "EXHIBITS A and B," "EXHIBIT C," "EXHIBIT E," and "EXHIBITS A and H" in his brief, the record reflects that he submitted only one exhibit on motion. Furthermore, the Petitioner does not specifically identify the exhibits.

III. 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 addition, 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 or Department of Homeland Security.

The Petitioner contends that we impermissibly heightened the final merits determination by requiring that additional criteria must be met beyond the minimum three. Where a petitioner satisfies at least three categories of evidence, we 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 at 1115.[6] Here, we evaluated the entirety of the record in the final merits determination. The decision does not reflect, as alleged by the Petitioner, that we required him to meet more than three criteria. In fact, the record shows that we found that both the evidence relating to the judging, scholarly articles, and leading or critical role criteria and the documentation regarding the other claimed criteria did not establish sustained national or international acclaim and indicate that he is one of the small percentage at the very top of the field.

Furthermore, although we determined that he fulfilled three criteria, the Petitioner argues that he also satisfied three other criteria.[7] As indicated above, we evaluated the evidence in the aggregate and concluded that the record as a whole did not establish his eligibility for classification as an individual of extraordinary ability. Therefore, even if the Petitioner met more than three criteria, which he did not, he did not show that the totality of his evidence was consistent with sustained national or international acclaim for this highly restrictive classification.

Regardless, the Petitioner makes assertions about our decision relating to his eligibility for the other three criteria that is not supported by the record. For instance, the Petitioner claims that we determined "that awards granted to Ph.D. level students cannot be indicative of extraordinary ability." On the contrary, we reviewed his submitted evidence and found that the Petitioner did not demonstrate that the field recognizes his academic degrees, academic awards, and scholarships as national or international awards for excellence. In addition, the Petitioner did not establish that *his*

[6] *See also* 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* 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the high level of expertise of the immigrant classification).

[7] The Petitioner concedes on motion that he does not meet the previously claimed published material criterion.

awards based on his student status reflected that he is one of that small percentage who has risen to the very top of the overall field rather than limited to other students aspiring to be in the field.

Moreover, the Petitioner makes numerous arguments that mirror his previously submitted appellate brief referring to the Director's original decision.[8] For example, as it relates to the Petitioner's memberships, he references the "abuse of discretion to fail to consider relevant evidence" and then indicates that "[t]here is no mention in the [Director's request for evidence] that [he] has served as a member of these prestigious associations." Here, the Petitioner's contentions pertain to the Director's decision in his appellate brief, and therefore do not show how our dismissal of his appeal was incorrect as a matter of law or policy. Further, the Petitioner did not show how we erred in determining that his membership evidence did not reflect that he has sustained national or international acclaim.

In addition, the Petitioner disputes our findings without directing to a particular law, regulation, or policy that specifically shows that we erred in our determinations. Instead, the Petitioner makes general, unsupported assertions. For instance, the Petitioner contends that he made original contributions of major significance in the field. However, disagreeing with our conclusions without establishing that we erred as a matter of law or policy or pointing to precedent decisions that contradict our analysis of the evidence is not a ground to reconsider our decision. Moreover, the Petitioner did not demonstrate that his contributions garnered attention at a level among that small percentage at the very top of the field of endeavor.

Similarly, the Petitioner claims that our determination that he demonstrated only one manuscript review "is incorrect as a matter of fact" since he "performed multiple manuscript reviews." The record reflects that the Petitioner provided three emails requesting him to review manuscripts; however, he did not show that he actually performed the reviews. Likewise, the Petitioner submitted evidence requesting him to be a "potential content expert reviewer of a module" for [redacted] and thanking him for "considering joining [redacted] quest to help [its] group of organizations branch out into the Telemedicine market" as a board member and advisory committee member. Without evidence establishing that he actually completed the reviews or performed in a judging capacity, he did not show that he performed additional acts of judging. Nevertheless, even if the Petitioner conducted the additional reviews and served on the advisory committee, he did not offer sufficient evidence that sets him apart from others in his field placing him among the small percentage at the very top of his field and reflecting sustained national or international acclaim.

Further, regarding scholarly articles, the Petitioner contends that he provided "extensive data that the articles were reviewed by numerous readers in 61 countries worldwide, 88 institutions, downloaded 499 times and referred to or cited by online publications 83 times." The record contains screenshots regarding downloads of the Petitioner's work on the Internet. In general, downloads may indicate that others have read his work but do not necessarily establish that his work has greatly impacted or influenced others in his field. Here, the Petitioner did not show the significance of the downloaded

[8] The Petitioner also cites to "EXHIBITS A and B," which is the same reference in his appellate brief.

statistics to establish that he has attained a career of acclaimed work in the field. Moreover, the Petitioner did not demonstrate that his publication history, approximately 10 articles primarily in 2011 and 2016, has been recognized as being one of the small percentage at the very top of his field and having sustained national or international acclaim.

In addition, the Petitioner asserts that our decision relating to his leading or critical role "did not support a favorable merits determination" and our "silence lends to the conclusion that this criteria [sic] supported a favorable merits determination." On the contrary, we specifically addressed the Petitioner's current employment with [redacted] a position he obtained approximately two months prior to the filing of his petition. Furthermore, we determined that the Petitioner did not demonstrate that his employment with [redacted] was reflective of, or has resulted in, widespread acclaim in the field or that he is considered to be at the very top of his field of endeavor. Moreover, we found that the Petitioner did not show any leading or critical roles for any other organizations or establishments with distinguished reputations, indicating sustained national or international acclaim.

For the reasons discussed above, the Petitioner has not demonstrated that our appellate decision was incorrect. We conducted a *de novo* review of the record on appeal, thoroughly analyzed the evidence, and ultimately concluded that while the Petitioner satisfied three of the evidentiary criteria, he did not establish the required sustained national or international acclaim for this highly restrictive classification. The Petitioner did not now show how we erred and did not support his motion with relevant precedent decisions to demonstrate that we misapplied law or policy. Accordingly, the Petitioner did not satisfy the requirements for a motion to reconsider.

B. Motion to Reopen

The Petitioner submits screenshots relating to downloads of his work on the Internet claiming "an updated breakdown showing [his] work has now been reviewed in over 70 countries worldwide, at 114 academic and private institutions, and referred to over 107 times online." As discussed above, although downloads may show that others have looked at his work, he did not demonstrate the significance or meaning of the data. As such, the Petitioner did not establish that the downloads reflect that he is among the small percentage at the very top of the field of endeavor, that he has a career of acclaimed work in the field, or that the field recognizes his achievements as having sustained national or international acclaim. Accordingly, the documentation he provides on motion does not show that he is an individual of extraordinary ability for this highly restrictive classification.

IV. CONCLUSION

The Petitioner has not shown that our previous decision was incorrect based on the record before us, nor does his new evidence on motion demonstrate his eligibility for the benefit sought. 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 M-S-W-*, ID# 2354225 (AAO Mar. 14, 2019)