U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-R-

DATE: OCT. 15, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a postdoctoral fellow, seeks classification as an individual of extraordinary ability in the sciences. *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 satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three. We dismissed his subsequent appeal, concluding that he had not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria.[1]

The matter is now before us on a motion to reconsider and a motion to reopen. On motion, the Petitioner submits additional evidence and asserts that he meets three criteria in addition to the one criterion we found that he meets in our previous decision.

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 acclaim

[1] *See Matter of E-R-*, ID# 1805888 (AAO Dec. 13, 2018).

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 only one of the initial evidentiary criteria, scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), but that he fell short of establishing several others. In the Petitioner's motion to reconsider, he argues that he submitted evidence showing that he satisfied the following criteria: published material under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), and original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v).[4] In his motion to reopen, the Petitioner presents additional documentation relating to those three criteria.

III. ANALYSIS

For the reasons discussed below, the Petitioner's motion to reconsider does not establish that we erred in our prior decision. Further, the new evidence submitted in support of the motion to reopen does not demonstrate that the Petitioner satisfied at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

A. Motion to Reconsider

The Petitioner contends that he meets three additional criteria. He does not, however, specifically argue that our decision was based on an incorrect application of law or policy. Disagreeing with our conclusions without establishing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior

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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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

[4] On motion, the Petitioner does not claim to meet the previously claimed criteria related to awards under the regulation at 8 C.F.R. § 204.5(h)(3)(i) or leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii).

decision). Here, we will address below the Petitioner's submission of new evidence under the motion to reopen section.

In reference to the judging criterion, the Petitioner did not dispute our finding in our previous decision that the evidence submitted showing that the Petitioner was requested to conduct seven manuscript reviews for professional scientific journals, such as *Physical Review Letters* and *Computer Physics Communications*, did not establish that he actually performed the manuscript reviews. In addition, he did not contest our conclusion that the documentation he presented on appeal, in the form of seven documents claiming to be his reviews of the manuscripts, did not contain pertinent identifying information such as who conducted the reviews, what manuscripts were appraised for which journals, and evidence from the publications confirming that he accomplished the manuscript review requests.

Regarding the published material criterion, in our prior decision, we determined that articles submitted, posted on lescienze.com, livescience.com, space.com, and sciencenode.org, do not reflect published material about the Petitioner in professional or major trade publications or other major media, which include the title, date, and author. *See* 8 C.F.R. § 204.5(h)(3)(iii).[5] Instead, the screenshots report on a new theory by scientists from [redacted] Laboratory without reflecting published material about the Petitioner. We noted that the Petitioner is never mentioned in the screenshots from space.com, only listed as a contributing author in the screenshots from livescience.com and sciencenode.org, and quoted one time in the screenshots from lescienze.com. On motion, the Petitioner disputes our finding, and asserts that "because the published material focuses on the particular team, refers to [the Petitioner] as a member of the team and co-author of the paper(s), and directly quotes him, the articles are about [the Petitioner], not merely his employer or an organization with which he is or has been associated." Similarly, the Petitioner contends that he made original contributions of major significance in the field. However, as stated previously, 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.

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 the Petitioner did not satisfy at least three regulatory criteria. Here, the Petitioner did not show how we erred or misapplied law or policy. Accordingly, the Petitioner did not meet the requirements for a motion to reconsider.

B. Motion to Reopen

As discussed above, in our decision, we found that the articles posted on lescienze.com, livescience.com, space.com, and sciencenode.org were not about the Petitioner, and he did not

[5] *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* 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (instructing that evidence of published material in professional or major trade publications or in other major media publications about the individual should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

demonstrate that those websites constituted professional or major trade publications or major media. We noted that as evidence of major media, the Petitioner previously offered screenshots from Similar Web regarding rankings and "traffic overview" for lescienze.com, livescience.com, and space.com, reflecting that the websites range from a global ranking of 5,985 to 97,235, a country ranking of 1,899 to 2,462, and total visits of 85,296 to 20,560,000. We found that the Petitioner did not demonstrate the significance of the Internet rankings and viewing statistics or show how such information reflects status as major media. On motion, the Petitioner submits new evidence in support of his assertion that those websites should be considered as major media. Specifically, a "January 2018 Web Server Survey" posted on news.netcraft.com indicates that it received survey responses from more than 1.8 billion websites. The Petitioner contends that, given that there are more than 1.8 billion websites, the fact that the above-referenced websites had a global ranking of 5,985 to 97,235, "places their circulation within the top . . .(.0001%) to . . . (.01%) of all websites on the internet" and indicates "the publications that have covered [the Petitioner] and his work constitute major media." However, documentation indicating the total number of websites on the Internet is not evidence demonstrating how the global or country rankings from Similar Web indicate major international or national media.

Regarding the judging criterion, as discussed above, in our previous decision we determined that evidence submitted showing that the Petitioner was requested to conduct seven manuscript reviews for professional scientific journals did not establish that he actually performed the manuscript reviews, in the absence of pertinent information such as evidence from the publications confirming that he accomplished the manuscript reviews. On motion, the Petitioner submits documentation from the journals *Computer Physics Communications*, *Physical Review Letters*, *Physical Review D*, and *Journal of High Energy Physics*, confirming that he completed manuscript review requests for those publications. As such, the Petitioner has sufficiently established that he meets this criterion.

In addition, we previously determined that the Petitioner's recommendation letters and updated information relating to his citation record did not establish that he made original contributions of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(v).[6] On motion, the Petitioner resubmits screenshots from Google Scholar showing that his top three highest cited articles garnered 106, 91, and 83 citations, respectively, evidence of the Petitioner's participation in the XXVIII International Symposium on [redacted] in [redacted] Italy, an article that he co-authored in the journal *Nature* on [redacted] 2018, after the filing of the petition, and screenshots from websites reporting on the article. However, this documentation has already been submitted, reviewed, and considered; accordingly, we will not address them in this proceeding.

As it relates to his citation record, the Petitioner provided screenshots from inspirehep.net reflecting that his "h-index" is 16 for "published only" and 18 for "citeable papers." He claimed that [redacted], suggests that 'for faculty at major research universities h ~ 10 to 12 might be a typical value for advancement to tenure (associate professor), and h ~ 18 for advancement to full professor.'" (emphasis in original). We noted that although the Petitioner referenced [redacted]s article, he did not submit it to support his claims. We further found that the Petitioner did not demonstrate how qualifying for advancement to full professor based on an h-index ranking shows that he has made original contributions of major significance in the field. Nor were we persuaded that

[6] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8 (providing an example that although work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

every journal article factored into the Petitioner's h-index rating is necessarily considered by the field to be an original contribution of major significance. We explained that publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115.

On motion, the Petitioner presents [redacted] article, "[redacted]' published on pnas.org, confirming [redacted] suggestion that "h ~ 18 might be a typical value for advancement to full professor." The Petitioner also provides a printout from [redacted] that, in part, discusses the tenure review process at [redacted] Faculty of Arts and Sciences. As discussed in our appellate decision, however, this evidence does not demonstrate how qualifying for advancement to tenure or full professor based on an h-index ranking satisfies this criterion. Rather, the appropriate analysis is to determine whether a petitioner has shown that, factoring in citations and other corroborating evidence, his findings have been considered important at a level consistent with original contributions of major significance in the overall field. [7]

For the reasons discussed above, the new documentation submitted on motion does not overcome our original decision, finding that the Petitioner did not satisfy at least three of the evidentiary criteria.

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 E-R-*, ID# 4857488 (AAO Oct. 15, 2019)

[7] *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).