U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6433225

Date: FEB. 5, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a civil engineer, seeks classification as an alien 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 petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Administrative Appeals Office (AAO) dismissed the Petitioner's appeal from that decision. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss both motions.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of

a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying 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 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).

III. ANALYSIS

In the 77-page brief submitted on motion, the Petitioner does not clearly differentiate between arguments for reopening and those for reconsideration. Attempting two separate discussions of the motion would further complicate matters. Considered in the aggregate, as discussed below, the Petitioner has not made a persuasive case in favor of granting either motion.

A. General Claims

The Petitioner claims that the April 2019 appellate decision "is void and invalid" because the AAO "did not read the appellant's case," "totally ignored the . . . appeal," and gave undue weight to the Director's

denial decision instead of rendering a *de novo* decision. The Petitioner asserts, therefore, that we must render a new appellate decision, including a full adjudication of the petition.[1]

The record, however, refutes these claims. Our nine-page appellate decision included several references to the Petitioner's appeal, including claims and evidence that the Petitioner submitted for the first time on appeal. The Petitioner refers to several of these points on motion.

The Petitioner cites several instances of case law, but does not show how the cited cases establish error in the appellate decision. For example, the Petitioner cites *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016), by which USCIS "adopt[ed] a new framework for adjudicating national interest waiver petitions" filed under section 203(b)(2)(B)(i) of the Act. The present case, however, does not involve a national interest waiver petition.[2] The Petitioner has not shown that *Dhanasar* embodies any broader principles which would apply to the present proceeding.

The Petitioner devotes a substantial portion of his brief to disputing aspects of the *Kazarian* decision and how U.S. Citizenship and Immigration Services (USCIS) has interpreted that decision. USCIS adopted key elements of the *Kazarian* decision in 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* (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

While a motion to reconsider is the proper forum for alleging incorrect application of law or policy, the Petitioner, here, disputes the policy itself. The AAO has no authority to overturn a circuit court decision or overrule a USCIS policy memorandum, and therefore the Petitioner's assertions regarding USCIS' interpretation of *Kazarian* lie outside the scope of a motion to reconsider.

B. Eligibility Criteria

The implementing regulation at 8 C.F.R. § 204.5(h)(3) allow a petitioner to meet the initial eligibility threshold by meeting at least three of 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*, 596 F.3d 1119 (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria,

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[1] The Petitioner also asserts that we must "waiv[e] the current fees." The proper procedure for requesting such a waiver would be to file Form I-912, Request for Fee Waiver, and waivers are issued only on the basis of an inability to pay the fee, rather than allegations of USCIS error.

[2] The Petitioner filed such a petition in November 2016, concurrently with the present petition, but that petition is not the subject of the present motion. USCIS records indicate the national interest waiver petition remains pending, because the Petitioner's subsequent appeal and motion filings have kept his file at the AAO, and thus unavailable to Service Center adjudicators.

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).

In our appellate decision, we acknowledged the Petitioner's claim to have met seven of the regulatory criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

We found that the Petitioner had met only two criteria, specifically (iii) and (vi). The Petitioner contends, on motion, that he met all seven claimed criteria, plus an eighth criterion, (iv), judging the work of others, that he had not previously claimed.[3] The Petitioner asserts error in our findings regarding those criteria, and in some cases submits additional evidence.

Upon consideration of the Petitioner's claims and evidence on motion, we do not find that he has met any regulatory criteria beyond the two previously granted. We discuss the denied criteria below.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

In our dismissal decision, we noted that the Petitioner relied primarily on "awards he received as a youth or student," as well as "certificates received for voluntary work." We found that the Petitioner had not established that the submitted materials were evidence of nationally or internationally recognized awards for excellence in his field of endeavor.

On motion, the Petitioner asserts that three of the certificates represent prizes in a "national tournament." Those certificates related to creative writing, whereas he has identified his field of endeavor as civil engineering. As such, the Petitioner does not explain how the certificates in creative writing relate to his field of endeavor.

The Petitioner also emphasizes that he received a letter from a Saudi prince, and he contends that this letter is, itself, an award for excellence "due to [the] rareness of issuing such a letter." The Petitioner

[3] Because the Petitioner did not previously claim to have satisfied the judging criterion, we did not err by failing to consider it.

relies heavily on this letter, stating that it is not only a prize or award, but also (1) remuneration for services; (2) evidence of a leading or critical role; and (3) evidence of original contributions of major significance.

The letter acknowledges the Petitioner's submission of proposals to the Saudi government, but it gives no indication that the government actually adopted or implemented those proposals, nor does it say what those proposals were. (The Petitioner contends that USCIS has no legitimate interest in asking, because it is a matter between him and a foreign government.) The Petitioner takes the position that signed correspondence from royalty is a rare and coveted honor, but the wording of the letter suggests nothing more than a courteous acknowledgement that the Saudi government had received the Petitioner's submission.

The Petitioner does not establish, on motion, that he received nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

In our appellate decision, we considered the Petitioner's membership in the Egyptian Engineering Syndicate (EES), but found that the Petitioner had not shown that the membership requires outstanding achievements as judged by recognized national or international experts.

The Petitioner maintains that "[t]o be a member in the PhD category, one needs to have an outstanding achievement in the PhD, as there is a committee that checks the authenticity of theses and research value." The Petitioner does not cite any prior evidence, or submit new evidence, to support this assertion. He identifies two websites on motion, stating that they include more information about EES membership. One of these links leads to a "Page Not Found" error message; the other indicates that the only membership requirement relevant to one's abilities or credentials is a bachelor's degree in engineering. The website does not indicate that the EES has a "PhD category" of membership, or explain the requirements for that category beyond possession of a doctorate.[4]

The Petitioner does not establish, on motion, that he is a member of associations in the field that require outstanding achievements of their members, as judged by recognized national or international experts.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

On motion, the Petitioner points to examples of his work, generally discussed previously. The originality of his work is not in question, but the Petitioner does not establish its major significance. The observation that a graduate student cited the Petitioner's work in a master's thesis shows that the

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[4] The functional website is located at http://nazra.org/en/node/359 (visited Feb.5, 2020).

Petitioner's work has gotten the attention of that student, but it is not indicative or emblematic of impact or influence throughout the field.

The Petitioner asserts that his findings regarding the use of sand "disrupt some aspects of the field that [were] previously thought to be canonical," but the Petitioner does not document any significant changes to civil engineering practices that arose from his work.

The Petitioner has not shown, on motion, that he has made original contributions of major significance.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

In our appellate decision, we acknowledged the Petitioner's submission of letters of appreciation from various sources, but found that the Petitioner had not shown that these letters demonstrated that the Petitioner performed in a leading or critical role, or, in several instances, that the entities providing the letters have distinguished reputations.

On motion, the Petitioner disputes our findings but does not establish error. The Petitioner contends that the organizations in question "would never give complementation [*sic*] letters to unknown people. . . . [They] would only provide appreciation letters to well-known, highly respected individuals." The Petitioner's uncorroborated assertions about the letters are not sufficient grounds to reopen the proceeding or reconsider the dismissal of the appeal. Likewise, the Petitioner does not support his contention that the entities have distinguished reputations because they are "legally registered." Existence as a legal entity is not the same thing as distinction. An entity can only be distinguished in comparison to others of its kind; no organization is distinguished simply by nature of its existence or registration.

The Petitioner has also not supported the claim that "every action/role/response to a need, like solving a problem or satisfying a necessity for an institute or an individual is a critical role." This definition is so broad that it would appear to encompass everyone who has ever worked for any organization, on either a paid or volunteer basis.

Noting that USCIS contacted some of the sources that provided such letters, the Petitioner asserts that the "providers feel highly uncomfortable" being asked about the matter, and the Petitioner asks "the reason for contacting the [letter] providers." USCIS has the investigative authority to make reasonable efforts to verify the Petitioner's claims and evidence, and exercising that authority is not an abuse of power, as the Petitioner contends. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b), which calls for "investigation of the facts in each case." Furthermore, those verification efforts showed the Petitioner's documents to be authentic, and therefore they did not contribute to the dismissal of the appeal.

The Petitioner details the activities that he performed for some of the entities that provided reference letters and asserts that we should study the letters closely. We took the letters into consideration in the prior appellate decision, and the Petitioner has not established that our initial review of these materials was deficient. The Petitioner has not established the necessity for an additional full review

of the record (which typically would be beyond the scope of a post-appellate motion). The burden of proof remains on the Petitioner to establish eligibility, and the Petitioner's motion does not sufficiently address key issues set out in the dismissal decision.

The Petitioner, on motion, has not shown that he performed in a leading or critical role for organizations or establishments with a distinguished reputation.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

On motion, the Petitioner contends that a personally signed letter from a Saudi prince is such a rare honor that it should be considered a form of remuneration. Furthermore, the Petitioner claims that the letter sets him apart from his peers because such letters are "never granted to the appellant's peers in the field," but the Petitioner cites no source for this claim.

The regulatory language refers to monetary compensation. 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*, 11 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda. The phrase "*significantly high* remuneration" indicates remuneration in a quantifiable amount that can be compared to what others have received. The Petitioner cites no evidence that the Department of Justice contemplated non-financial remuneration when it promulgated the regulation in question in 1991. Other forms of recognition fall under a separate criterion relating to prizes and awards, as discussed above. (As noted previously, the Petitioner also claims the prince's letter as an award.)

The Petitioner has not established, on motion, that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

C. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the alien's occupation. The Petitioner previously claimed that his three advanced degrees and several recommendation letters, particularly the letter from the Saudi prince, amount to comparable evidence. In our appellate decision, we found that the Petitioner had not shown that the ten standard criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to his occupation.

On motion, the Petitioner states: "if the alien does not readily meet any one of the enumerated criteria, he may provide comparable evidence that demonstrates extraordinary ability." The regulatory threshold, however, is not a given alien's inability to "meet any one of the enumerated criteria." Rather, a given petitioner must show that those criteria "do not readily apply to the alien's *occupation*." One's inability to meet criteria that *do* readily apply to one's occupation would tend to point toward ineligibility, rather than special consideration of alternative evidence. The Petitioner also maintains

that he "has already satisfied . . . 8 criteria out of 10," which directly contradicts any claim that the standard criteria do not readily apply to his occupation.

We addressed the Petitioner's degrees and recommendation letters in our prior decision, and the Petitioner has shown no error that would require us to revisit them here. The Petitioner has not established the need to consider comparable evidence, or that the evidence so identified would qualify him for the highly restrictive immigrant classification that he seeks in this proceeding.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.