U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6287597

Date: FEB. 20, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a travel agent, 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. We 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 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,
>
> (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.

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

A. Evidentiary Criteria

The Petitioner owns and operates a travel agency in the Republic of Georgia. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met three criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media; and
- (viii), Leading or critical role for distinguished organizations or establishments.

We concluded that the Petitioner had not satisfied any of the three claimed criteria. On motion, the Petitioner maintains that he meets the three claimed criteria. After reviewing the arguments and evidence on motion, we conclude that he has not met any of them.

> *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)

The Petitioner's travel agency was a finalist for a Welcome to Georgia National Tourism Award in the category of Best [redacted] We concluded that this recognition was deficient for several reasons:

- The Petitioner himself, rather than his employer, must receive prizes or awards;
- As a finalist, the travel agency did not actually receive any prize or award; and
- The Petitioner did not establish that the Welcome to Georgia National Tourism Award is nationally or internationally recognized.

On motion, the Petitioner documents that he is the sole shareholder of the travel agency, and he asserts that he is therefore the *de facto* recipient of any honors accorded to the business. The Petitioner submits a new letter from the award's founder, which duplicates a previous letter and adds a new passage indicating that, as the travel agency's owner, the Petitioner was "consequentially . . . a finalist in the [redacted] award category." There is some merit to this assertion, but the other deficiencies remain.

The Petitioner contends that the founder's letter also establishes that the company's finalist status is essentially a prize or award in its own right, but the letter does not address this point. The founder discusses the purpose of the award, and the judging process, but does not show that nomination as a finalist is, itself, a prize or award.

Also, the Petitioner's submission on motion does not establish that nomination as a finalist is nationally or internationally recognized. Statements from officials of the awarding entity are not evidence of recognition outside of that entity, and government funding or sponsorship does not inherently convey such recognition.

The Petitioner has not established that his travel agency's nomination for a Welcome to Georgia award constitutes receipt of a nationally or internationally recognized prize or award.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner previously submitted an article from the website of *Georgian Journal*. *Georgia Today* ran the same article, citing *Georgian Journal* as the source. We cited a number of deficiencies:

- The article briefly mentions the Petitioner, but is not about him as the regulation requires;
- The article did not identify the author, as required; and
- The Petitioner submitted statistics regarding the two websites, but did provide context to show that those websites constitute professional or major trade publications or other major media.

On motion, the Petitioner states that "he is currently awaiting a response from . . . the Senior Media Consultant" regarding the authorship of the article. The Petitioner does not name the organization that employs "the Senior Media Consultant."

The Petitioner does not address the other issues outlined above, and therefore neither overcomes them nor shows our prior conclusions to have been in error.

> *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)

The Petitioner had previously indicated that he performed in a leading or critical role for [redacted] Tours by creating "a partnership in Crete that allowed [redacted] Tours access to Georgia" and by organizing a tour of Crete for "different VIP Travel Agencies from Georgia." We determined that the Petitioner had not established that his role was leading or critical. For instance, he did not "show how his organized tour contributed to the successes of [redacted] Tours or resulted in increased visitors." We also concluded that the Petitioner did not show "that [redacted] Tours enjoys a distinguished reputation."

On motion, the Petitioner submits letters signed by four different travel agents. Three of the letters are identical, even including the same typographical errors (such as "their" instead of "there"). The letters were clearly not written independently, and we conclude that the true author of the letters was the Petitioner or someone acting on his behalf.[1] These letters included the phrases "critical role" and "distinguished reputation," but simply repeating the language of the statute or regulations does not suffice to meet the Petitioner's burden of proof.[2]

The fourth letter, from [redacted] Georgia, describes that travel agency but does not mention the Petitioner or [redacted] Tours. The Petitioner does not explain how this letter establishes that he played a leading or critical role for [redacted] Tours.

The Petitioner has not overcome our prior determinations regarding any of the three previously claimed criteria for extraordinary ability.

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[1] The use of identical language across various letters or affidavits from supposedly different sources can indicate that the assertions in these documents are not credible. *See Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *see also Mei Chai Ye v. U.S. Dep't. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

[2] *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

B. Supplemental Evidence

The Petitioner filed the combined motion on May 20, 2019. More than a month later, the Petitioner submitted additional evidence in the form of a letter from a Georgian publisher; a letter from the Georgian National Tourism Administration; and messages and invoices from a travel agency in Greece.

We cannot accept or consider this supplemental submission. A motion to reopen must be complete at the time of filing. The regulation at 8 C.F.R. § 103.3(a)(2)(vii) permits a petitioner to supplement an appeal after filing it, but there is no parallel provision for motions to reopen.

Form I-290B, Notice of Appeal or Motion, reflects these requirements. Part 2, line 1, of that form includes several options for parties filing an appeal or motion. Line 1b reads: "I am filing an appeal to the AAO [Administrative Appeals Office]. My brief and/or additional evidence will be submitted to the AAO within 30 calendar days of filing the appeal." There is no comparable option to allow a petitioner to file a motion and then supplement the motion at a later date. Instead, lines 1d and 1f both indicate: "My brief and/or additional evidence is attached." The instructions to Form I-290B likewise indicate that any new evidence must accompany the motion.

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.