U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8205521

Date: JUNE 2, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a strategic port planner, 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 concluded, in the initial decision and on motion, that the record did not establish that the Petitioner met any of the ten initial evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), or that he would continue work in his area of expertise in the United States. We dismissed his subsequent appeal, concluding that, while the evidence established that the Petitioner would continue work in his area of expertise, 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.

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

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motions to reconsider and reopen.

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 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).

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*. 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. 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.[1]

II. ANALYSIS

The record reflects that the Petitioner is a strategic port planner with more than 25 years of experience in maritime and civil infrastructure development. In dismissing the appeal, we determined that the Petitioner satisfied the evidentiary requirements of only two of the initial evidentiary criteria, relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary at 8 C.F.R. § 204.5(h)(3)(ix).[2] In the Petitioner's motion to reconsider, he argues that he submitted evidence showing that he meets two of the previously claimed criteria, membership in associations at 8 C.F.R. § 204.5(h)(3)(ii) and original contributions at 8 C.F.R. § 204.5(h)(3)(v), plus a third criterion, scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), that he had not previously claimed.[3] The Petitioner asserts error in our findings regarding those previously claimed criteria, and presents additional documentation. 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.

> *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)

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

[2] On motion, the Petitioner does not claim to meet the previously claimed criterion related to published material in certain media at 8 C.F.R. § 204.5(h)(3)(iii).

[3] Because the Petitioner did not previously claim to have satisfied the scholarly articles criterion, we did not err by failing to consider it. A post-appellate motion to reopen is not the proper forum to advance new claims of eligibility that the Petitioner did not advance at any prior stage in the proceeding. We note that a petitioner abandons issues not raised on appeal. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *see also*, *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Notwithstanding the foregoing, we further note that documentation regarding the Petitioner's master's thesis by which he claims to meet this criterion, indicating it has been digitally archived at the University of [redacted] library but is "not available from this repository", does not establish that the thesis was published in professional or major trade publications or other major media.

In our appellate decision, we considered the Petitioner's membership in the World Association for Waterborne Transport Infrastructure (PIANC) and his position on the board of the Australian Logistics Council (ALC), but found that the Petitioner had not established that membership in those associations requires outstanding achievements of its members as judged by recognized national or international experts in their disciplines or fields. The Petitioner does not contend that we erred in our determination concerning PIANC or ALC, nor does the Petitioner introduce new evidence relevant to that determination.

On motion, the Petitioner argues for the first time that he meets this criterion based on his having been "recently appointed as an Independent Director on the Board of Directors of a distinguished company, [redacted]" Regarding the new evidence of the Petitioner's membership, we note that this evidence postdates the filing of the petition in this matter. The Petitioner submits an email dated August 2018 from [redacted] group managing director for [redacted] confirming the Petitioner's intent to apply for the position of Independent Director, and documents regarding [redacted] board meetings in 2019 that the Petitioner attended as a director of the company. The Petitioner did not demonstrate that his membership with [redacted] occurred prior to or at the time of his initial filing in November 2017. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. We will therefore not consider this new evidence on motion.

In light of the foregoing, the Petitioner did not establish, on motion, that he meets the requirements of this criterion.

> *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)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

In our appellate decision, we stated that the Petitioner had not identified specific contributions or shown those contributions to be of major significance in the field. On motion, the Petitioner has submitted a new reference letter from [redacted], an architect and engineer, who worked with him on design projects including the [redacted] marina in2006. [redacted] asserts that the Petitioner's "master's degree research into advanced port planning techniques . . . have helped set processes and standards in port planning internationally." He also references the Petitioner's work in the development of the [redacted] Future Study which he claims "has set the future of [redacted] sea based trade infrastructure for the next 100 years," and his development of "theoretical approaches and

models to the assessment of all kinds of ports and related infrastructure" and "cutting-edge techniques in broader infrastructure planning and design." This demonstrates that the Petitioner worked on high profile infrastructure planning projects, but the letter does demonstrate specifically what his original contributions are and how they amount to contributions of major significance. As stated in our previous decision, reference letters that do not provide specifics regarding the Petitioner's contributions and their impact on others in the field are insufficient to establish eligibility under this criterion.

In addition, the Petitioner resubmits copies of additional reference letters. The Petitioner 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 decision). This documentation has already been submitted, reviewed, and considered; accordingly, we will not address these letters in this proceeding.

Further, on motion the Petitioner argues for the first time that he meets this criterion based on consulting work on additional projects, including the [redacted] Container Terminal Sale, [redacted] Independent Commercial Review, [redacted] Shipping and Capacity Study, and the [redacted] Terminals Sale, and submits several articles about those projects. We note that the evidence relating to those projects postdates the filing of the petition in this matter. As it appears that the Petitioner's work on those additional projects began in 2018 and 2019, after he filed his petition in November 2017, the evidence does not demonstrate that his claimed contributions to the field occurred prior to or at the time of his initial filing. Again, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). We will therefore not consider this new evidence on motion. Notwithstanding the foregoing, the articles do not mention or otherwise refer to the Petitioner, and the record does not otherwise show specific contributions related to those projects attributable to the Petitioner that are of major significance in the field.

Finally, on motion, the Petitioner provides "extraordinary ability background information" on the role of ports, the need to modernize U.S. Seaports, and the impact of port infrastructure on economic growth, including articles from the *Journal of Shipping and Trade*, and the websites www.issues.org, wwww.aapa-ports.org. www.oecd.org., and www.epa.gov. He also submits additional articles relating to various projects in which he had involvement, including the [redacted] Port Future Study, the port planning study for the Port Authority of [redacted], consulting to the Port of [redacted] with [redacted] Ports Corporation [redacted]. The Petitioner does not explain, however, how those articles establish original contributions of major significance. The articles do not mention or otherwise refer to the Petitioner, and the record does not otherwise document specific contributions that are of major significance in the field that arose from his work.

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.

III. CONCLUSION

The assertions made by the Petitioner on motion do not establish that our previous decision was grounded in an incorrect application of law or policy. In addition, the new evidence submitted on motion does not overcome the grounds underlying our previous decision or demonstrate his eligibility for this classification.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.