U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6248839

Date: MAR. 5, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a testing and commissioning 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. 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. Motion to Reopen

On motion, the Petitioner identifies no new facts and submits no affidavits or other documentary evidence.[1] (A new, unsworn personal statement from the Petitioner is not an affidavit, and the statement mostly repeats a previously submitted statement.) We will dismiss the motion to reopen because it does not meet the requirements of such a motion.

[1] The brief on motion includes references to "new evidence," but these references, like much of the brief, are copied from the brief the Petitioner previously submitted on appeal. The brief identifies no evidence that was not already in the record at the time of the appeal.

B. Motion to Reconsider

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).[2] The Petitioner previously claimed to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

In our appellate decision, we agreed with the Director's determination that the Petitioner had not met any of the claimed criteria. On motion, the Petitioner does not dispute our finding regarding (iv), judging the work of others, but maintains that he satisfied the other five claimed criteria.

For the reasons explained below, we conclude that the Petitioner has not adequately addressed the stated grounds for dismissal of the appeal, and has not established good cause for reconsideration.

> *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 then-employer, [redacted], named him "Most Outstanding Employee of the Year" for 2008. In our prior decision, we acknowledged this recognition, but we determined that the Petitioner did not show that this certificate is a nationally or internationally recognized prize or award for excellence in his field of endeavor.

On motion, the Petitioner repeats a section of the appellate brief pertaining to the above award. Because that brief predated our appellate decision, language from that brief cannot serve to identify errors of law or fact in the appellate decision.

Previously submitted information indicates that [redacted] has partnered with industry experts on major infrastructure projects" around the world. International activity by the company, however, does not establish that a prize that is only available to [redacted] employees is, itself, internationally recognized.[3]

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[2] Apart from the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3), the Petitioner asserts that he will continue to work in the area of extraordinary ability, as required by section 203(b)(1)(A)(ii) of the Act. This was not a basis for dismissal of the appeal, and therefore the Petitioner does not establish error by raising the issue on motion.

[3] When evaluating a prize or award, we may take into consideration any limitations on competitors (an award limited to competitors from a single institution, for example, may have little national or international significance). *See* 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* 6 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

The language of the criterion requires national or international recognition of the prize or award, as distinct from the reputation or recognition of the awarding entity.

The Petitioner has not shown that we erred in determining that he did not satisfy this criterion.

> *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)

The Petitioner asserts that his membership in the Philippine Society of Mechanical Engineers (PSME) meets the requirements of this criterion. In our appellate decision, we quoted PSME's own website, which indicated that membership was open to all "professional mechanical engineers, mechanical engineers, and certified plant mechanics" who registered and paid the required fees. We also found that "the Petitioner did not establish that membership is judged by recognized national or international experts."

On motion, as above, the Petitioner repeats the language from the appellate brief, and does not address the information we cited in our appellate decision. The Petitioner has not shown that we erred in our appellate decision.

> *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 again uses language copied from his appellate brief. In that brief, he asserts that he satisfied this criterion, but does not identify any specific contributions or explain their significance. Instead, the Petitioner states that the necessary information is in "[n]umerous reference letters" in the record.

We previously addressed and quoted from those reference letters in our appellate decision. We stated: "While the letters applaud the Petitioner's personal and job abilities, they do not identify original contributions that he has made to the field, nor do they explain how his contributions have been of major significance."

On motion, the Petitioner does not address or acknowledge our discussion of the letters, and therefore does not reveal any errors in that discussion.

> *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)

On appeal, the Petitioner stated that letters from his previous employers established that his "role . . . was of significantly greater importance than that of the numerous other employees in the same field." After examining these letters, we concluded: "Although the letters confirm the Petitioner's employment, they do not demonstrate that he performed in a leading or critical role for any of the

companies." We provided quotations to support that conclusion. We also noted that "the letters do not contain information demonstrating that [the companies] have a distinguished reputation."

On motion, the Petitioner repeats language from the appellate brief, which does not address our findings. The Petitioner also adds a new sentence: "Several recommenders also comment and supported the Petitioner's development and leading and critical role in their organizations." This is a general statement that summarizes prior claims and does not identify any specific error of law or policy in our prior appellate decision.

> *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 appeal, the Petitioner asserted that we should accept "his previously submitted Confirmation Letter of Salary from petitioner's supervisor." We identified deficiencies in this letter, and concluded that the Petitioner "did not provide comparative wage data of other testing engineers" or otherwise submit documentary evidence that would allow a meaningful comparison of his remuneration to that of others in the same field.

On motion, rather than address the identified deficiencies in the letter, the Petitioner repeats the section of his appellate brief that asked us to take that same letter into consideration. Repetition of prior assertions does not rebut our responses to those assertions. Repeating or restating the arguments from the appellate brief, without addressing or acknowledging the findings we have already made about those arguments, cannot form a basis for reconsideration of our appellate decision. The motion does not meet the requirements of a motion to reconsider, and will be dismissed for that reason.

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.