U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11149415

Date: OCT. 14, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, an attorney specializing in international tax law, 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 Texas Service Center denied the petition, concluding that record did not establish, as required, that the Petitioner met at least three of the ten initial evidentiary criteria for this classification.[1] We dismissed the Petitioner's appeal from that decision. The matter is now before us on a motion to 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 the motion.

I. MOTION REQUIREMENTS

A motion to reconsider must (1) 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 U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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 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).

[1] The Director initially denied the petition on August 17, 2018, due to abandonment, but subsequently reopened the petition on the Petitioner's motion.

II. LAW

Section 203(b)(1) of the Act makes visas available to immigrants 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 international 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 he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria 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) (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).

II. ANALYSIS

The issue before us is whether the Petitioner has established on motion that our decision to dismiss his appeal was based on an incorrect application of law or USCIS policy. The Petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision.

A. Prior AAO Decision

The Petitioner, an attorney, is a member of the [redacted] and has practiced in the area of international tax law for more than 20 years.

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). At various times in these proceedings, the Petitioner has claimed to meet six of these criteria, summarized below:

- (ii), Membership in associations which require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical roles for distinguished organizations.

In the denial notice, the Director addressed the Petitioner's claims and evidence with respect to all six claimed criteria and determined that he had satisfied none of them. Upon *de novo* review on appeal, we reached the same conclusion. We also determined that the record lacked evidence that the Petitioner seeks to continue work in his claimed area of extraordinary ability in the United States.

B. Motion to Reconsider

On motion, the Petitioner maintains that he has satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (vi) and (viii), but does not contest our determination that he did not meet the criteria relating to participation as a judge of the work of others and authorship of scholarly articles. The Petitioner asserts that our decision to dismiss the appeal "despite the extensive supporting evidence seems contrary to the law and seems to ignore the serious supporting evidence submitted from unbiased sources." He re-submits copies of six recommendation letters in support of his claims.

A motion does not entail *de novo* review of the full record of proceeding. The Petitioner cannot establish grounds for reconsideration by repeating prior arguments and assertions or generally disagreeing with our conclusions. To warrant reconsideration, the Petitioner must establish errors of *law or policy* (as documented by any relevant precedent decisions or other cited law or policy) or errors of *fact* (through a showing the decision was incorrect based on the record as it stood at the time of the prior decision). We conclude that the Petitioner has not established grounds for reconsideration of our appellate decision.

The motion to reconsider focuses on four of the evidentiary criteria, which we address below.

> *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 previously claimed eligibility under this criterion based on (1) his membership in the [redacted] and (2) his selection as one of four attorneys serving as [redacted] Counsel representing the [redacted] of India before the [redacted] High Court.

On appeal, the Petitioner did not contest the Director's finding that his membership in the [redacted] did not meet the requirements of this criterion, and he now concedes on motion that it is not a qualifying membership.

In evaluating this criterion in our appellate decision, we emphasized that the Petitioner had not explained why his service as [redacted] Counsel for the [redacted] should be considered a "membership in an association" as required by the criterion at 8 C.F.R. § 204.5(h)(3)(ii). We further determined that he had not established that this evidence should be evaluated as "comparable evidence" pursuant to 8 C.F.R. § 204.5(h)(3).[2]

We nevertheless discussed the reference letters of letters of [redacted] and [redacted] the Petitioner's former colleagues at the [redacted] and the letter of [redacted] Commissioner of [redacted] (Judicial) for the [redacted] We acknowledged, for example, [redacted]'s statement that those who serve as [redacted] Counsel undergo a "rigorous selection procedure where more than 100 lawyers applied for the coveted right to represent the [redacted] of India," and his reference to a review panel consisting of five [redacted] officials. We noted, however, that he did not indicate whether this panel required applicants to demonstrate outstanding achievements, or whether they evaluated applications on some other basis. [redacted] stated that the Petitioner was appointed to the [redacted] counsel position "based on his excellent results in Tax Law and Corporate Law," but did not address the selection process in his letter. [redacted] simply praised the Petitioner as "an asset" to the [redacted] without discussing the selection requirements for the [redacted] Counsel role, or the outstanding achievements that led to the Petitioner's selection.

Therefore, even if we had determined that the Petitioner's services as [redacted] Counsel for the [redacted] could qualify as a "membership in an association," there was insufficient evidence that this entity requires outstanding achievements as a condition for membership or that membership eligibility is judged by recognized national or international experts.

On motion, the Petitioner does not address our specific reasons for determining that he did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(ii), and therefore does not establish that our conclusion was based on an incorrect application of law or USCIS policy. The Petitioner asserts that our decision erroneously stated that "there was no proof that was his employment was of significance." We did not make this statement or reach this conclusion in our discussion of this criterion. The Petitioner notes that the letters from [redacted], [redacted], and [redacted] (as well as additional letters from [redacted] and [redacted]) "specify the method of choosing . . . [redacted] Counsels." As discussed in our decision, of the submitted letters, only [redacted]'s letter even briefly touches upon the method of selection and we explained in our decision why his statement was not sufficiently specific.[3]

In his brief on motion, the Petitioner emphasizes that the submitted recommendation letters were "not from friends," but we did not determine that they were, nor did we otherwise question the qualifications of the persons who provided reference letters in support of this petition. The Petitioner notes that these individuals "would not have written these letters especially on their letterhead if the Petitioner was not outstanding." However, the question before us in evaluating this criterion is not whether the persons providing reference letters believe that the Petitioner is outstanding in his field.

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[2] The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

[3] Although not addressed in our previous decision, we note that [redacted]'s letter only confirms that the Petitioner represented the [redacted] before the [redacted] High Court. [redacted]'s letter states that the Petitioner was appointed as a [redacted] Counsel "based on his outstanding results in Banking, Arbitration, Tax and Commercial Litigation" a statement that mirrors a portion of [redacted]'s letter.

Rather, the Petitioner must provide evidence to establish that he is a member of an association that requires outstanding achievements of its members as judged by recognized national or international experts in his field.

Finally, the Petitioner states "I believe that being a [redacted] Counsel of the [redacted] [redacted] of India by itself satisfies the requirements of [8 C.F.R. § 204.5(h)(3)(ii)]." He emphasizes the high level of the [redacted] High Court within the Indian court system and the precedential value of its decisions. However, his statements do not address the specific evidentiary deficiencies noted in our decision or explain how our conclusions were based on a misapplication of law or USCIS policy.

Here, we determined that the Petitioner did not establish that his full-time employment as [redacted] [redacted] Counsel with the [redacted] was a "membership in an association." Even if it could be considered equivalent or comparable, the record lacked evidence from the [redacted] explaining the selection process and criteria for choosing [redacted] Counsel as well as evidence demonstrating that those responsible for making such selections are nationally recognized experts. The Petitioner does not address or rebut the specific conclusions in our appellate decision, and therefore, he has not shown that we erred in that decision.

> *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 claimed eligibility under this criterion based, in part, on the publication of decisions by the [redacted] High Court on an online legal database. He provided examples of published decisions in which his name is mentioned as counsel for the Indian government. We determined that the court decisions are not about him, but rather are about the legal issue that was before the court. We emphasized that articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1. *7 (D. Nev. Sept. 8, 2008)(upholding a finding that articles about a show are not about the actor).

The Petitioner also provided articles which were printed in reports and on the websites of multinational consulting firms such as KPMG and Deloitte.[4] We observed that the articles extensively cover the opinions of the [redacted] High Court and provide an analysis of the legal issues addressed in cases in which the Petitioner served as [redacted] counsel for the government. However, we determined that none of the submitted articles mention him or focus on his contributions to these cases and are therefore not about him and his work.

In his brief on motion, the Petitioner acknowledges our conclusion that the submitted court opinions and articles about those opinions were not about him, but rather about the legal issues before the court. He argues, however, that "[t]his conclusion seems misdirected because the author of the opinion and

[4] The Petitioner also submitted an article from the website of *The Times of India* and screenshots from a video on the YouTube channel for [redacted]' We determined that this evidence did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii) and the Petitioner has not contested our conclusion on motion.

articles in the publications describing those [d]ecisions necessarily refer to the work of the author of the brief and arguments" made on behalf of the government and discussed within the opinions. The Petitioner concludes that the submitted court opinions and articles about those opinions "should more than satisfy" the published materials criterion.

The Petitioner further argues that the Delhi High Court opinions and articles about those opinions are necessarily "relating to his work in the field," because he argued the cases on behalf on the government of India. However, he does not address how the submitted evidence meets the regulatory requirement that the articles must also be "about" the petitioning individual and not simply relating to their work. The Petitioner disagrees with our determination but does not discuss how we misapplied law or USCIS policy in determining that published materials that do not mention him, or mention him only in passing, are not "about" him. As discussed above, the Petitioner's disagreement with our conclusions does not provide a sufficient basis for reconsideration absent a showing that we also erred as a matter of law or policy.

> *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)

The Petitioner claimed eligibility under this criterion because, as senior standing counsel for the [ ], he argued on behalf of the government of India in "high profile" cases that "established new law in India." In our prior decision, we acknowledged that he submitted copies of the [ ] High Court's decisions in five cases in which he represented the [ ] as well as evidence showing that the court's rulings had been reported by Ernst & Young and KPMG. We further noted [ ]'s statement that "the cases argued by [the Petitioner] have led to increasing jurisprudence of law and particularly banking and tax laws," and [ ]s statement that the Petitioner's cases have "assisted in advancement of tax law on both domestic and international tax law front." Finally, we acknowledged that the court's rulings impacted the parties involved and other companies facing similar tax issues in India.

However, we determined that the evidence did not establish how the Petitioner made *original* contributions to the field of international tax law based on his role in defending the Indian government's position in these tax matters. Rather, the evidence showed that he successfully argued on behalf of an already established legal position.

On motion, the Petitioner reiterates that "[m]any of the opinions rendered by the Court in which the Petitioner was counsel established new Indian tax law" and emphasized that "the importance of these decisions is why they were written about in the International tax journals." The Petitioner asserts that the evidence should satisfy the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), and states that "the fact that the articles from the accounting firms do not mention [his] name is not significant." The Petitioner asserts that he was clearly was responsible for the briefs and oral arguments before the [ ] High Court, and references letters that were quoted in our decision, as well as three additional letters "which may have been ignored in the AAO decision."

As noted above, we reviewed all letters submitted in support of the petition even if we did not discuss each one in our decision. A letter from [ ] was similar in content when compared to the letters of [ ] and [ ]. Specifically, he noted that the Petitioner's "case positions" had "significant influence on judicial practice in India and advancement of law in India." A letter from

, re-submitted on appeal, praises the Petitioner's broad expertise in international law and business, but does not discuss his claimed original contributions of major significance to Indian law. Finally, a letter from states that the Petitioner "possesses high professional qualities and has represented the Government of India before the High Court" but does not address how he made original contributions to the field. The Petitioner has not established that we overlooked evidence that demonstrates his eligibility under this criterion.

As noted, we determined that, while the evidence indicated that the Petitioner had argued high profile cases as senior counsel for the and that the court's decisions in those cases had an impact on Indian tax law, he had not established how his defense of the Indian government's position in these tax matters was an *original* contribution in his field. The Petitioner's brief on motion does not address our reasoning or identify or rebut any error involved in reaching this conclusion. As discussed, it is not sufficient to simply disagree with our conclusion or to assert that he believes his evidence was sufficient to establish eligibility.

The Petitioner has not established that our previous determination regarding this criterion was incorrect based on the evidence in the record at the time of the decision.

> *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 order to meet this criterion, the Petitioner must establish that he played either a leading or a critical role for a qualifying organization or establishment. If a leading role, the evidence must establish that the he is or was a leader. A title, with appropriate matching duties, can help to establish if a role is, in fact, leading. If a critical role, the evidence must establish that he has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of his role, but rather his performance in it that determines whether the role is critical.[5]

The Petitioner claimed eligibility based on his role as Counsel for the as well as his role with his law firm. We found that the record did not contain sufficient evidence regarding the Petitioner's law firm or his position to demonstrate either a leading or critical role or the distinguished reputation of the firm. We acknowledged the distinguished reputation of the but, upon review of the evidence, including the reference letters discussed above, we found that the evidence did not establish his standing within the department's leadership structure. Further, we determined that the evidence did not establish that the Petitioner's contributions were of significant importance to the department's activities, or how they affected its activities. Although the Petitioner submitted letters from former colleagues at the the letters did not contain detailed and probative information that specifically addressed how his role for the organization was leading or critical.

On motion the Petitioner, referring to our decision, states that we determined "that the cases argued by the Petitioner on behalf of the did not establish that he performed a leading or critical role for an organization. This is not true." He emphasizes that the decisions of the

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[5] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14.* 10 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

High Court "hold a precedent and binding value before the ." However, he does not address how the precedential authority of the High Court decisions establishes that he performed in a leading or critical role with the Again, the record does not contain evidence explaining how the was structured or sufficiently detailed letters from that organization to demonstrate that the Petitioner's role was of significant importance its overall outcome and activities. The Petitioner disagrees with our conclusion but does not present an argument as to how we misapplied the regulation or USCIS policy in determining that he did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

For the reasons discussed above, the arguments submitted on motion do not overcome our original decision, in which we concluded that the Petitioner did not satisfy any of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In his brief, the Petitioner expresses his belief that "the submitted letters, opinions, international accounting firm articles and other evidence also satisfy the other evidence requirements of 8 CFR Section 204.5(h)(4)." While he appears to make a "comparable evidence" claim under 8 C.F.R. § 204.5(h)(4), he does not explain why the criteria listed under 8 C.F.R. § 204.5(h)(3) are not readily applicable to his occupation.

Finally, the Petitioner briefly addresses our statement that the record did not clearly establish that he intends to continue working in the United States in his claimed area of extraordinary ability as required by section 203(b)(1)(ii) of the Act. We noted that the Petitioner indicated in response to one of the Director's requests for evidence that he had become involved in the marketing and distribution of personal care products through a Delaware company called We did not deny the petition on this basis but indicated that the issue should be addressed in any further proceedings. On motion, the Petitioner states that he decided to form after his extraordinary ability petition was denied, explains that this Delaware company is an affiliate of his Indian law firm, notes that has filed an immigrant petition on his behalf under section 203(b)(1)(C) of the Act, and asserts that "the fact that these 2 businesses do not operate in the same line of business is irrelevant." However, the Petitioner's motion does not directly address whether he intends to continue working in the field of international tax law in the United States.

In addition, the Petitioner's motion does 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).

III. CONCLUSION

The Petitioner has not established that our previous decision was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence of record at the time of that decision. Therefore, the motion to reconsider will be dismissed.

ORDER: The motion to reconsider is dismissed.