U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16494565

Date: SEP. 15, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a clinical chemist, seeks classification as an individual 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 the record did not establish, as required, that the Petitioner meets at least three of the ten initial evidentiary requirements for this classification. We dismissed the Petitioner's appeal of that decision, and dismissed a subsequent combined motion to reopen and motion to reconsider. The matter is again before us on a second combined motion to reopen and reconsider.

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 both motions.

I. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

A motion to reopen is based on factual grounds and must (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that we based our decision on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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. 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 their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the 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) (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).

III. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Here, the subject of the prior decision was our dismissal of the Petitioner's combined motion to reopen and reconsider. As such, the issue before us is whether the Petitioner has submitted new facts to warrant reopening or established that our decision to dismiss the previous combined motion was based on an incorrect application of law or USCIS policy.

A. Procedural History

The Director determined that the Petitioner met two of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3); specifically, those relating to her authorship of scholarly articles, and her participation as a judge of the work of others in her field. On appeal, the Petitioner asserted that she also met two additional criteria relating to her membership in associations requiring outstanding achievements of their members, and her original contributions of major significance to her field. In dismissing the appeal, we agreed with the Director that she did not meet those two additional criteria. The Petitioner then filed a combined motion to reopen and reconsider, which included new evidence in support of both criteria. In dismissing the Petitioner's combined motion, we acknowledged and addressed her newly submitted evidence, and articulated why such evidence and her accompanying assertions were insufficient to warrant reopening or reconsideration.

B. Motion to Reopen

A motion to reopen is based on documentary evidence of new facts. 8 C.F.R. § 103.5(a)(2).

> *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 dismissing the prior motion, we noted that although the Petitioner asserted that her education and post-doctoral training qualify as outstanding achievements, she did not articulate how those facts showed that obtaining her degree and her post-doctoral training constituted outstanding achievements for purposes of meeting the membership criterion. We noted that while the doctoral program at [redacted] may be the only one accredited by [redacted], the fact that [redacted] has chosen to attain an accreditation for its program tailored to [redacted] scientists does not prove that those who complete such a program have made an outstanding achievement. Similarly, although she asserted that the post-doctoral training she completed at the [redacted] and [redacted] is 1 of 35 accredited by [redacted] we determined that she had not shown that the completion of that training is an achievement that stands out from those of her peers, despite the fact that such training may better qualify her to pursue a career as a clinical chemist than those who have not yet completed their education and training.

On motion, the Petitioner reiterates her claim that her Ph.D. in clinical and bioanalytical chemistry and her post-doctoral training in the same field qualify as outstanding achievements. She states that her completion of her post-doctoral training at the [redacted] and [redacted] satisfies this criterion, again noting that the program at [redacted] and [redacted] is only one of 35 accredited by [redacted] She further points out that "this position is limited to one per year per hospital" and concludes that "at any time in a year, there will be 35 Post Doctorates under training." Additionally, she asserts that only two of the 35 post-doctoral training programs are [redacted]"

She also provides an excerpt from the U.S. News website discussing [redacted] noting that [redacted] is one of only 281 [redacted] in the United States, and that it is ranked fourth on the "[redacted] list." She relies on this excerpt to demonstrate that distinguished reputation of [redacted] and its programs, and concludes by asserting that "my peer group constitutes a total of 35 post doctoral fellows. Of which, I am one of two who is highly specialized in [redacted] clinical chemistry."

While we note the Petitioner's repeated assertion that she is one of 35 who received post-doctoral training in clinical chemistry, we refer to our previous determination that while such training may better qualify her to pursue a career as a clinical chemist than those who have not yet completed their education and training, she has not shown that the completion of that training is an achievement that stands out from those of her peers. Although she newly asserts on motion that only two of the 35 programs offer [redacted] training, and that she is one of two individuals who received [redacted] post-doctoral training in clinical chemistry, she cannot establish this claimed fact

with unsupported testimonial evidence alone.[1] Even if established, this fact alone is insufficient to demonstrate an outstanding achievement as contemplated by the membership criterion, as the Petitioner readily asserts that such positions are available annually to post-doctoral researchers in the field.

The Petitioner also provides an article titled [redacted] published by the American Association of Clinical Chemistry (AACC), which discusses the importance of [redacted] clinical chemistry and the distinction between treatment of [redacted] diseases and disorders from those of [redacted] She again reiterates her claim that she is an expert in [redacted] clinical chemistry, and relies on this article to demonstrate that her field is concentrated and she is one of a small percentage of individuals qualified to perform services in the field. This article, however, only provides a general overview of this field and does not identify the Petitioner by name or support her assertion that she is an expert in the field of [redacted] clinical chemistry.

While we acknowledge the Petitioner's completion of a specialized course of study in the field of clinical chemistry, this article merely provides a general overview of the field of [redacted] health through laboratory medicine. The Petitioner once again appears to rely upon the small number of clinical chemists who have graduated from a [redacted] program, and the claimed small number of post-doctoral research programs available in the narrower field of [redacted] clinical chemistry. However, as discussed in our previous decision, the Petitioner has not shown how obtaining her degree and completion her post-doctoral training is an outstanding achievement as contemplated by this criterion.

While we acknowledge the highlights of [redacted] outlined in the website excerpt from U.S. News, as well as the overview of [redacted] provided in the AACC article, we do not agree that this new evidence establishes that she has met the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which requires 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.

Furthermore, although the Petitioner previously maintains throughout the record that she specializes in the field of [redacted] clinical chemistry, it is unclear why this evidence was not previously submitted or whether it was unavailable for any reason. The Petitioner provides no explanation for not previously offering this evidence.

For the reasons stated above, the new evidence submitted on motion does not establish that the Petitioner meets this criterion, nor has she shown that our previous decision was based upon an incorrect application of law or policy.

[1] The Petitioner states in her motion that [redacted] and [redacted] and [redacted] are the only two hospitals in the United States that offer post-doctoral training that is exclusively [redacted] specific. We note, however, that the record lacks corroborating documentation of this claim, such as statistics or documentation from [redacted] or from the hospitals themselves regarding the nature of their post-doctoral training programs. The record therefore does not support the Petitioner's assertion.

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)

Regarding her claim that she also met the original contributions criterion, the Petitioner previously submitted evidence which she asserted showed how her research helped to form guidelines relating to [redacted] that were adopted at the [redacted] and other health care organizations. Specifically, the Petitioner resubmitted a copy of a paper she authored regarding [redacted] which was published in *Annals of Clinical & Laboratory Science*, as well as two papers which make reference to that paper. She relied on one of these papers, titled [redacted] and published in *Clinical Biochemistry* in 2019, noting that the paper's citation of her work on [redacted] demonstrates that her work has been implemented at "many hospitals." In dismissing her motion, we determined that this evidence did not overcome our previous finding that the extent of the Petitioner's contribution had not been established, as the paper indicated that hers was one of several papers which confirmed the [redacted] issue.

On motion, the Petitioner submits copies of papers she authored and claims that they serve as evidence of her original contributions in the field of [redacted] clinical chemistry. Preliminarily, we note that while the Petitioner lists six papers as being appended to the motion, only four of the six identified papers are actually included with her motion submission.[2] In addition, the Petitioner only discusses one of the submitted documents; specifically, a case report titled [redacted] published by the AACC. Although she indicates on motion that [redacted] and constitutes "an original contribution and original work," she does not provide any further explanation regarding this claim. Moreover, it appears she is one of four authors of this paper; therefore, the extent of her contributions in comparison to the other authors, absent additional evidence, cannot be determined.

The remaining three papers submitted on motion also indicate that she is one of multiple authors for each publication. There is no further discussion or analysis regarding the subjects of these articles or the manner in which they constitute original contributions. These papers, as well as the AACC case study discussed above, do not satisfy the plain language of this criterion, which requires the Petitioner to demonstrate not only that her contributions are original, but also of major significance in the field. Although this evidence shows that the Petitioner's work contributed to the knowledge on the subject of [redacted] clinical chemistry, there is no evidence demonstrating that the field has changed as a result of these papers, or that the findings and/or research discussed therein is being implemented or reproduced within the field. While the Petitioner's authorship of these papers is notable, she has not shown how her original scientific contributions have been of major influence in the field, by providing, for example, evidence that her contributions have been widely implemented, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. The new evidence submitted on motion does not establish that the Petitioner meets this criterion, nor has she shown that our previous decision was based upon an incorrect application of law or policy.

[2] The motion does not contain a copy of [redacted] or [redacted]

For the reasons discussed above, the Petitioner has not presented new facts sufficient to overcome our prior determination. While the evidence submitted on motion is new, it does not overcome our previous finding that the Petitioner did not meet the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) or the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), either viewed alone or in the context of the evidence previously submitted.

For these reasons, we will dismiss the motion to reopen.

C. Motion to Reconsider

A motion to reconsider must specify the factual and legal issues that were decided in error or overlooked in our prior decision. Although the Petitioner indicates that she is concurrently filing a motion to reconsider, the Petitioner's general request that we reconsider our prior decision does not specifically address our reasons for dismissal, nor does she attempt to identify or rebut any specific errors in that decision.

Here, the Petitioner describes the new evidence she submits on motion under the evidentiary criteria relating to memberships and original contributions. However, the Petitioner does not argue or point to how we incorrectly applied law or policy in our prior decision, as required for a motion to reconsider. Disagreeing with our conclusions without showing 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). Furthermore, our decision thoroughly analyzed and explained why every piece of evidence and argument addressed in the motion did not meet the regulatory requirements. Here, the Petitioner did not demonstrate that we erred in either misapplying law or policy or failing to address prior arguments or evidence.

In sum, although the Petitioner has submitted a brief in support of the current motion, she does not contend that we misapplied the law or USCIS policy in dismissing the previous motion to reconsider. The Petitioner's statement in support of the current motion does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions. As such, the motion does not meet all the requirements of a motion to reconsider, and must therefore be dismissed.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration. Accordingly, the combined motion to reopen and motion to reconsider will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.