U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19865708

Date: MAR. 17, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, an actor, seeks classification as an individual of extraordinary ability. 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, and we subsequently dismissed the appeal. 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

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 a multi-part analysis. First, a petitioner can demonstrate 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). 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.

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).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits U.S. Citizenship and Immigration Services' authority to reconsider to instances where an applicant has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements at 8 C.F.R. § 103.5(a)(1)(iii) (such as submission of a properly completed and signed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. Specifically, 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. 8 C.F.R. § 103.5(a)(3). In these proceedings, it is the petitioner's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A brief summary of this proceeding reflects that the Director determined that the Petitioner satisfied three of the ten evidentiary criteria: awards under 8 C.F.R. § 204.5(h)(3)(i), published material under 8 C.F.R. § 204.5(h)(3)(iii), and judging under 8 C.F.R. § 204.5(h)(3)(iv). As such, we evaluated the totality of the evidence in the context of a final merits determination.[1] Based on this review, we concluded that the Petitioner did not establish his sustained national or international acclaim,[2] that he is among the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[3]

As a preliminary matter, the review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we examine any new arguments to the extent that they pertain to our dismissing his appeal. Thus, the issue before us is whether we erred in evaluating the totality of the Petitioner's evidence in the final merits determination.

On motion, the Petitioner contends that since we did not disturb the Director's decision relating to meeting three criteria, we contradicted ourselves by negating the evidence in the final merits determination. In addition, the Petitioner asserts that "since Regulation requires 3 criteria together to prove national or international acclaim, then one criterion has only to qualify 1/3 of national or international acclaim." The Petitioner made similar arguments on appeal, which we thoroughly addressed. Again, *Kazarian*, 596 F.3d at 1119-20 set forth the multi-part analysis where a two-part review is conducted: the evidence is first counted to determine whether the individual fulfills at least three of the evidentiary criteria, and if so, then the totality of evidence is considered in the context of

[1] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

[2] *Id.* (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

[3] *Id.* (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

final merits determination to decide whether an individual is among that small percentage who has risen to the very top of the field of endeavor. While the Petitioner continues to maintain that simply satisfying three criteria is sufficient in showing eligibility for an extraordinary ability classification, for the reasons stated, both case law and USCIS policy do not support his assertions.

In the final merits determination relating to his awards, we discussed the Petitioner's five awards and explained why they did not demonstrate his sustained national acclaim in his field and indicate that he is currently among the small percentage who has risen to the very top of the field. On motion, the Petitioner states that "[s]ince [the] Service Center admitted that [he] has met this criterion and [the] AAO has not in its opinion disqualified this criterion, [he] regards it as also admitted by AAO and does not need to further address this criterion." Here, the Petitioner does not contest or explain any error in our determination for this issue.

Regarding published material, we concluded that he submitted one qualifying article reflecting published material about him and acknowledged that he provided ten other articles. Moreover, we determined that while his limited media coverage indicated that he had received some media recognition for certain roles and projects during his career, the record did not demonstrate that he enjoyed sustained national or international acclaim. On motion, the Petitioner claims that he "was reported many times and [he] only selected 10 from the many reports" and "[h]ad [the] Service Center required a definite number of more than 10 reports by media in its RFE [he] could have provided many more reports about [him]." In the case here, we evaluated the record based on the Petitioner's claims and his submitted documentation. If further media reporting existed and he wanted us to evaluate the evidence, then he should have submitted the additional documentation. Moreover, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. In addition, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) does not specify a certain number of published articles to meet the first step in the *Kazarian* analysis but may be a consideration in the second part. This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Chawathe*, 25 I&N Dec. at 376.

As it pertains to his judging experience, we determined that his single instance of judging in 2015 did not show him as being among that small percentage at the very top of the field. On motion, the Petitioner contends that the "[r]egulation requires alien to judge the work of other peers," and "[i]t does not require such judgment made by an internationally top person." The first step of the *Kazarian* analysis involves determining whether the individual satisfies the regulation at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence that the individual has participated as a judge of the work of others. Once the first step is achieved, then the totality of the evidence, including any judging experience, is evaluated in the second step of the analysis. Although we agree that an individual is not required to judge an internationally top person, the Petitioner did not show how his limited judging experience represented an individual as being among that small percentage at the very top of the field of endeavor. The Petitioner, for instance, did not demonstrate how his sole instance of judging of an internal organizational award at the China Film Performing Arts Institute in 2015 distinguished him within his field, reflecting sustained national or international acclaim or that his achievements have been recognized through extensive documentation.

Beyond the three criteria determined by the Director that the Petitioner satisfied, we considered additional documentation in the record to determine whether the totality of the evidence demonstrated eligibility as an individual of extraordinary ability. Specifically, we evaluated evidence relating to the Petitioner's membership with the China Theatre Association (CTA) and concluded that he did not establish that his membership was indicative of his sustained national or international acclaim, garnered him such acclaim, or that membership was reserved for those actors in the small percentage at the very top of the field. On motion, the Petitioner makes his prior assertion that "membership in CTA is one of the listed criteria towards providing his sustained national acclaim. Or his membership has met 1/3 of the requirement of national or international acclaim." Again, the Petitioner did not meet the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) for the first part of the *Kazarian* analysis. Even if he did, simply satisfying the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x) does not establish sustained national or international acclaim, as previously discussed. Regardless, we addressed his membership claims in the final merits determination and explained that the Petitioner did not show how is evidence qualified him for extraordinary ability classification.

For the reasons discussed above, the Petitioner did not establish that we erroneously applied law or policy. Accordingly, we will dismiss his motion to reconsider.

III. CONCLUSION

The Petitioner has not shown that we incorrectly applied law or policy in our previous decision based on the record before us.

ORDER: The motion to reconsider is dismissed.