U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23272889

Date: NOV. 08, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a barista, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements of this classification by demonstrating his receipt of a major, internationally recognized award or meeting at least three of the evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3). We dismissed the Petitioner's appeal from that decision, as well as four subsequent motions to reopen. The matter is now before us on a fifth motion to reopen, in which the Petitioner submits evidence intended to meet one of the evidentiary criteria.

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. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals 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 the initial evidence requirements (through either a one-time achievement or meeting three lesser criteria), 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); 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. 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening, 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.

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). The issue before us is whether the Petitioner has submitted new facts to warrant reopening of our decision to dismiss the Petitioner's fourth motion. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Applicant's claims on motion.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, 502 U.S. 314, 323, (1992) (citing INS v. Abudu, 485 U.S. 94, 108 (1988)); see also Selimi v. Ashcroft, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. INS v. Abudu, 485 at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." Id. at 108. Granting motions too freely could permit endless delay when

foreign nationals continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. See generally INS v. Abudu, 485 U.S. at 108. The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992); see also Maatougui v. Holder, 738 F.3d 1230, 1239–40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, 485 at 110. With the current motion, the Petitioner has not met that burden.

Because the Petitioner has not indicated or shown that he 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). In his fourth motion, the Petitioner did not identify any error in our previous discussion of the Sprudge publication. In our decision dismissing that motion, we also determined that the Petitioner had not established that he met a fifth, previously unclaimed criterion at 8 C.F.R. § 204.5(h)(3)(ii), relating to 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.

With the present motion, the Petitioner reasserts his eligibility under the same criterion at 8 C.F.R. § 204.5(h)(3)(ii). He resubmits the same evidence he provided with his previous motion and does not explain what, if anything, is new about the evidence. As we already explained, the evidence does not establish that either the IBG or its board of directors is an association which requires outstanding achievements of its members, as judged by recognized national or international experts. Additionally, as our prior decision noted, the Petitioner must establish eligibility as of the petition's filing date. See 8 C.F.R. § 103.2(b)(1). Accordingly, the Petitioner has not shown proper cause for reopening the proceedings.

The Petitioner has not overcome the grounds for dismissal of the prior motion, or established eligibility for the classification he seeks. We will therefore dismiss the motion to reopen.

IV. CONCLUSION

For the reasons discussed, the evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision. Therefore, the motion to reopen will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.