U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23651606

Date: OCT. 31, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a musician, 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. *See* section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A).

The Director of the Nebraska Service Center denied the petition, finding that the Petitioner had only satisfied two of the initial three required evidentiary criteria. We agreed with the Director's decision and dismissed the Petitioner's appeal. 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 by a preponderance of the evidence. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).[1] 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).

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

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

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 reopening or 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 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 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).

II. ANALYSIS

In our decision dismissing the appeal, we agreed with the Director's determination that the Petitioner had only satisfied two of the initial evidentiary criteria and likewise concluded that the Petitioner did not satisfy the three additional criteria he claimed relating to lesser nationally or internationally recognized prizes or awards, original contributions of major significance in the field, and evidence that he had a leading or critical role for organizations or establishments that have a distinguished reputation. *See* 8 C.F.R. §§ 204.5(h)(3)(i), (v), (viii). In support of the current motion, the Petitioner offers new evidence and argues that he met at least three required evidentiary criteria, thus asserting he warrants a final merits determination.

A. Motion to Reopen

First, we will address the merits of the Petitioner's motion to reopen. In support of the criterion related to original contributions of major significance, the Petitioner provides a 2022 review article that was posted on es.rollingstone.com and reference letters from [redacted], a theater producer, writer, and director, and two musicians – [redacted], and [redacted].

With respect to the review in the online publication of the *Rolling Stone*, because the article was published in 2022, it does not establish the Petitioner's eligibility at the time of filing in 2021 and thus the 2021 time of filing precedes the 2022 publication date of the article. *See* 8 C.F.R. § 103.2(b)(1).

With respect to the three reference letters, we find that they offer information that is similar in content to the Petitioner's prior submissions. As with the previously submitted reference letters, the new letters also discuss the Petitioner's musical work and claim that he has created a new musical genre. Although all three references discuss how the Petitioner has influenced their respective works – in the case of [redacted], the impact resulted in a collaborative project with the Petitioner – the letters are not sufficient to demonstrate that the Petitioner's music constitutes "contributions of major

significance in the field," as required under 8 C.F.R. § 204.5(h)(3)(v). As noted in our prior decision, evidence that the Petitioner's talents have been recognized is not sufficient to show that his work has been widely implemented throughout the field, has remarkably impacted or influenced the field, or has otherwise risen to a level of major significance.

Accordingly, the new facts and evidence submitted in support of this motion do not establish that the Petitioner has shown a proper cause for reopening.

B. Motion to Reconsider

Next, we will address the Petitioner's motion to reconsider. In doing so, we will address the three criteria that served as the basis for our appeal decision.

First, we will discuss the original contributions criterion, which requires the Petitioner to establish that his musical work is both original and of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(v). In support of the motion, the Petitioner contends that the major significance of the Petitioner's work "is intrinsically rooted" in its originality and uniqueness.

Notwithstanding the Petitioner's argument, originality and major significance are two separate elements of the criterion in question. As stated above, the original contributions criterion focuses on two key elements: the originality of the Petitioner's work and the "major significance" of that work in the Petitioner's field. Establishing that the Petitioner's work is original and unique does not necessarily establish that it is also of major significance. As discussed above, the evidence submitted thus far, including the submissions on motion, shows that the Petitioner's work has had influence on individuals in the music and entertainment industry, but it does not establish that the impact of the Petitioner's music rises to the level of major significance in the field. The Petitioner urges us to consider the evidence "as a whole," arguing that the totality of the evidence establishes "the originality, significance and influence of his innovative, original and unique work." We find, however, that an analysis of this nature was conducted on appeal, where we considered and discussed specific submissions comprehensively. And while we acknowledged that the submitted evidence was "not without weight," we concluded that the evidence submitted for this criterion did not demonstrate that the Petitioner's work constitutes contributions of "major significance" in the field. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988).

The Petitioner also asserts that his work has sustained national or international acclaim and points to his performance at the [redacted] Stage as evidence of such acclaim. However, first we focus on whether the Petitioner has met three of the ten outlined criteria before turning to the question of sustained national or international acclaim in the final merits determination. The Petitioner has not established that our finding on appeal, that the Petitioner did not meet this criterion, was inconsistent with the law or USCIS policy. Likewise, the Petitioner's attempt to reintroduce previously submitted evidence is not sufficient to meet the requirements of a motion to reconsider. Such evidence was addressed in our prior decision and ultimately deemed insufficient for purposes of meeting the requirements of the original contributions criterion. Further, although the Petitioner questions the lack of evidentiary weight previously given to a licensing agreement that we dismissed in a footnote, he does not dispute the fact that the licensing agreement postdated the petition's filing

date. He also does not establish that we erred in not considering the postdated document as evidence of the Petitioner's eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

Next, we will discuss the criterion concerning the receipt of lesser national or international recognized prizes or awards of excellence. Here, as on appeal, the Petitioner once again argues that there is no existing prize or award that applies to his "new genre of music" and asks that we accept comparable evidence in the form of the "qualification of Excellent," which the Petitioner earned at a masterclass with [redacted] guitarist [redacted]'

Regarding the leading or critical role criterion, the Petitioner again points to his work with [redacted] [redacted], relying on the company's past work with certain well-known artists as evidence of its distinction. In essence, the Petitioner reasserts arguments he made on appeal regarding this criterion and the above criterion pertaining to lesser national or international prizes or awards; the Petitioner expresses his disagreement with our decision and points to evidence that we previously addressed, but he does not identify a law or USCIS policy that is inconsistent with our analysis, or explain how our analysis was incorrect as a matter of law or policy.

Finally, the Petitioner cites to a Supreme Court precedent in which the Court determined that an agency decision is arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicles Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983). However, the comprehensive nature of our analysis belies the assertion that our decision is not arbitrary or capricious based on the Supreme Court outlined discussion of these concepts. To the contrary, in our appeal decision, we considered and discussed the Petitioner's evidence, and offered sound legal reasoning as to why the evidence did not support a favorable determination with regard to each of the three disputed criteria. The purpose of a motion to reconsider is to address potential error in how the law or USCIS policy was applied in the preceding decision. Merely disagreeing with our conclusions without establishing that we erred as a matter of law or pointing to USCIS policy that contradicts our analysis of the evidence is not a ground for reconsideration of our decision.

In the matter at hand, the Petitioner has offered no cogent argument to demonstrate that we incorrectly applied the law or USCIS policy in our prior 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).

III. CONCLUSION

Accordingly, although the Petitioner disagrees with our prior determination, he offers no new facts that warrant a reopening of this proceeding, nor does he establish that our prior decision was incorrect as a matter of law or policy. Because the Petitioner did not demonstrate that his current motion meets the requirements for a motion to reopen under 8 C.F.R. § 103.5(a)(2) or the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3), we will dismiss the motion to reopen and reconsider.

ORDER: The motion to reopen and reconsider is dismissed.