U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27203023

Date: AUG. 18, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an oil and gas specialist, seeks classification as an individual of extraordinary ability. 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 Petitioner did not establish that he met three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

In order to establish eligibility for the extraordinary ability classification, a petitioner must either demonstrate a one-time achievement (that is, a major, internationally recognized award) or provide

documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). If a petitioner meets these initial evidentiary requirements, we then consider the totality of the evidence to determine whether the record shows the individual's sustained national or international acclaim and demonstrates that they are among the small percentage at the very top of their 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 the, if fulfilling the required number of criteria, considered in the context of a final merits determination).

The Petitioner does not claim that he has a one-time achievement and seeks to establish that he has provided evidence meeting at least three of the ten criteria. The Director found, and our previous decision agreed, that the Petitioner has submitted evidence that meets the criteria at 8 C.F.R §§ 204.5(h)(3)(iv) and (vi), for participating as a judge of the work of others in his field and for publishing scholarly articles. However, we also affirmed the Director's conclusion that the Petitioner did not meet the other criteria he claimed:

- (v) Original contributions of major significance in the field;
- (viii) Lead or critical role for organizations or establishments with distinguished reputations; and
- (ix) High salary or other significantly high remuneration in relation to others in the field.

On motion, the Petitioner asserts that he qualifies for all three of the criteria that we previously denied.

A. Motion to Reopen

On motion to reopen, the Petitioner submits evidence regarding his wages and professional accomplishments. First, we note that much of the evidence submitted on motion came into being after the petition filing date of May 2020. Petitioners must establish eligibility as of the time of filing. 8 C.F.R. § 103.2(b)(1). Therefore, while speaking invitations and other evidence that postdate the filing of the petition can establish a petitioner's continuing national or international acclaim, they cannot establish initial eligibility. *Id.*; *see Matter of Katigbak*, 14 I&N Dec. 45, 49 (BIA 1971) (stating that properly denied visa petitions cannot be subsequently approved at a future date when a noncitizen may become qualified under a new set of facts).

Regarding the criterion at 8 C.F.R. § 204.5(h)(3)(v), significant contribution to the field, the Petitioner submits various publication and speaking offers, as well as statistics regarding his academic publications. This new evidence postdates the filing of the petition and therefore cannot establish the level of significance the Petitioner's contributions had reached as of the time of filing. 8 C.F.R. § 103.2(b)(1). As such, the new facts provided do not demonstrate that as of the time of filing, the Petitioner had made original contributions to his field, or that those contributions were of major significance.

The Petitioner did not submit new evidence regarding the criterion at 8 C.F.R. §204.5(h)(3)(viii), lead or critical role for organizations or establishments with distinguished reputations, and therefore has not overcome our prior conclusion that he did not qualify under this criterion.

The Petitioner previously sought to establish his eligibility for the criterion at 8 C.F.R. § 204.5(h)(3)(ix) by comparing his wages to those of construction managers. In our prior decision, we noted that the petition did not establish that the Petitioner's duties were comparable to those of construction managers. We further noted that the available information appeared to indicate that the Petitioner was employed as an engineer in the oil and gas industry, and that he had not submitted evidence showing that his salary or other remuneration were high in relation to others in that field.

On motion, the Petitioner states that he also earns a significantly high salary in relation to other engineers in the oil and gas industry, and submits wage data from the Bureau of Labor Statistics (BLS) for various engineering occupations to support this claim.[1] The Petitioner earned $161,440 in 2018 and $180,165 in 2019. The latter wage is higher than the 90th percentile wage in Texas for all of the engineering disciplines provided by the Petitioner, which the Petitioner contends qualifies him for this criterion. However, despite the Petitioner's claims, the same is not true when specifically comparing the Petitioner's wage to 2019 Texas wages in the oil and gas industry.[2]

The 90th percentile wage for Texas construction managers in the Petitioner's industry in 2019 was $206,860. For mechanical engineers in the same location and industry, the 90th percentile wage was $196,910. The 90th percentile wages for civil engineers and electrical engineers were not recorded because they were higher than $208,000 a year. While the Petitioner has not clarified which of these occupations or combination of occupations aligns with his work, the record indicates that his wages have been below the 90th percentile when compared to those of similar workers regardless. We further note that the Petitioner has described his work as managerial and involving the oversight of other engineers, and the mean wage for Texas architectural and engineering managers in the oil and gas industry in 2019 was $214,230, which is significantly higher than the Petitioner's wage at the time. Therefore, while the Petitioner asserts that earning a wage above the 90th percentile for his field qualifies him for this criterion, the record does not establish that he meets this standard or that his salary was high enough to be notable within his field.

Finally, while we acknowledge the Petitioner's job offer for a position paying $100 an hour, or $208,000 for a year of full-time work, this offer is dated October 2022, which is over two years after the underlying petition was filed. Therefore, the job offer cannot establish the Petitioner's initial eligibility in this case. 8 C.F.R. § 103.2(b)(1). The new evidence provided by the Petitioner does not establish that he has received a high salary or other significantly high remuneration in comparison with others in his field, and so he does not qualify under the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner has not submitted new facts which establish his eligibility for the benefit sought. Therefore, he has not met the requirements of a motion to reopen, and the motion will be dismissed.

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[1] The motion includes national and Texas wage data pertaining to civil engineers; mechanical engineers; mining and geological engineers; marine engineers and naval architects; energy engineers, except wind and solar; and electrical engineers. Notably, despite the Petitioner's employment on natural gas projects, it does not include data for petroleum engineers. Additionally, as it is not apparent that the Petitioner was employed as a mining, marine, or energy engineer in 2018 or 2019, we will not analyze the wage figures for those occupations.

[2] Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Employment and Wage Statistics Research Estimates*, https://www.bls.gov/oes/current/oes_research_estimates.htm (follow hyperlink for "Sectors 21, 22, & 23: Mining, Utilities, and Construction" under "May 2019" to download the data in .xlsx format).

B. Motion to Reconsider

On motion to reconsider, the Petitioner contests the conclusions of our prior decision.[3] The Petitioner states that he submitted the types of documentation listed in the Director's request for evidence (RFE), and that this should be sufficient to establish his eligibility.[4] However, the Petitioner does not identify a law or policy that we incorrectly applied in our last decision, as required for a motion to reconsider. 8 C.F.R. § 103.5(a)3).

Furthermore, much of the evidence provided in response to the RFE and on appeal did not come into existence until after the petition was filed and thus cannot demonstrate eligibility. For example, the Petitioner's book, [redacted] was registered for a copyright in June 2020, indicating it was published at this time. The five Amazon reviews of the book are from March and April 2021, and the various other forms of recognition the book received also came after the time of filing the petition. The Petitioner cannot establish that as of May 2020, the time of filing, his book had had a significant impact on the field as per 8 C.F.R. § 204.5(h)(3)(v), because the book was not yet published at that time.

Secondly, the evidence does not establish that any of the Petitioner's contributions have had a major impact on his field. For example, the Academia.edu readership analytics of the Petitioner's scholarly publications do not provide sufficient information to establish whether these publications have influenced subsequent work in the field. Statistics such as the Petitioner being in the "Top 3.1% by Views" in a 12-month period do not indicate who he is being compared with, and appear to be derived from viewership within narrow research areas such as "Gas Pipelines" and "Hot Corrosion." The significance of this data is therefore not apparent. Furthermore, these statistics do not establish how often the Petitioner has been cited by others, which is a more reliable indicator of influence on the field than simple readership.[5,6] The various speaking and publication invitations in the record also do not indicate that they were issued due to a specific impact the Petitioner's work had on his field.

The support letters provided do not demonstrate that the Petitioner's work has had such a deep or widespread impact as to be considered major in the field of oil and gas construction engineering. For example, the letter from K-V-, an engineer at [redacted] states that two of the Petitioner's articles were used "as reference material/input for preparation of pipe support and Human Factors technical specifications to be used during the engineering phase" of an unspecified project, but does not state to what extent that input influenced the project. Various other letters, such as those from his former coworkers P-P- and S-G, indicate that the Petitioner has helped the profitability of his employers and speak highly of his abilities, but do not specify how his work was original or how it has impacted the field of oil and gas construction engineering as a whole.

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[3] The Petitioner also repeats his prior appeal's contention that the Director overlooked evidence in the original denial. However, our review on motion is limited to our prior decision. 8 C.F.R. § 103.5(a)(1)(ii).

[4] Evidence must be examined for relevance, probative value, and credibility in determining whether a petitioner's claim is probably true. *See Matter of Chawathe*, 25 I&N Dec. at 376.

[5] *See generally* 6 *USCIS Policy Manual* F.2, Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, https://www.uscis.gov/policymanual ("[E]ntries (particularly a goodly number) in a citation index that cite the person's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor.").

[6] We further note that these statistics encompass a time span from October 2019 to April 2021, much of which falls after the petition filing date.

The record does not establish that the "philosophy document" the Petitioner wrote for the Petroleum Exploration and Production Association of New Zealand is original or show that its use has impacted others. The documentation regarding the Tribology Excellence Award from the Institution of Mechanical Engineers does not state the criteria for the award beyond "showcasing an excellent professional case study" that was used by the Petitioner's employer to "improve efficiency and output" from a production facility. It is therefore not apparent that this award is for original work or that it reflects any impact beyond that employer. The evidence does not demonstrate that the Petitioner has made an original contribution to his field which has had a major impact on that field as a whole, and so he does not qualify for the criterion at 8 C.F.R. § 204.5(h)(3)(v).

Regarding the criterion at 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner previously sought to establish his eligibility based on leading or critical roles for [redacted] and [redacted] Our prior decision found that the Wikipedia articles provided were insufficient to establish that [redacted] are organizations with distinguished reputations in the field. On motion, the Petitioner states that he "would not much stress . . . [redacted] as it is a company based in India and is very reputed there, but it does not mean that people in the United States would know about the organization and it being distinguished . . ." He goes on to state that [redacted] . . needs no evidence to be considered a distinguished one" because of its long history and its operations during World War II.

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361, *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Stating that [redacted] history gives it such a distinguished reputation that it requires no evidence does not meet the Petitioner's burden in this case. *See generally* 6 *USCIS Policy Manual*, *supra* at F.2, Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence ("The relative size and longevity of an organization or establishment is not in and of itself a determining factor but is considered together with other information to determine whether a distinguished reputation exists."). The Petitioner has declined to provide any reason our decision was incorrect regarding [redacted] reputation, except to state that its reputation is more known in India than in the United States. This assertion does not establish that our decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).[7]

The Petitioner does not assert our prior decision applied a law or policy incorrectly regarding the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion to reconsider will be dismissed. 8 C.F.R. § 103.5(a)(4).

[7] We acknowledge the Petitioner's contention that his hiring for the [redacted] qualifies him for this criterion. However, as noted above, eligibility must be established as of the time of filing. 8 C.F.R. § 103.2(b)(1). Since the Petitioner was hired for this position well after filing, we decline to consider it when determining his initial eligibility. *Id.*

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.