U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27129749

Date: JUL. 10, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a public relations director, seeks classification as an alien 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 Petitioner did not establish that the Petitioner had satisfied at least three of the ten evidentiary criteria, as required. 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 motions.

I. MOTION TO REOPEN

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner does not state new facts or submit new evidence as required. Since her motion to reopen does not meet the regulatory requirements, it will be dismissed.

II. MOTION TO RECONSIDER

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.

In her motion to reconsider, the Petitioner contests the correctness of our prior decision relating to three of the evidentiary criteria, including two that we reserved. She relies on federal district court decisions and USCIS policy memoranda to support her motion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

To meet this criterion, a petitioner must establish that material was published about them and relating to their in the field of extraordinary ability. The petitioner need not be the only subject of the material, but it must include a substantial discussion of the petitioner's work and mention them in connection to the work. *See generally* 6 *USCIS Policy Manual* F.2, Appendices Tab, www.uscis.gov/policy-manual. The petitioner also must establish, through the submission of evidence of the publication's high circulation or viewership compared to others and evidence of its intended audience, that the publication qualifies as a professional or major trade publication or other major medium. *Id.*

In our decision, we noted that the Petitioner submitted several articles, but that while at least one mentioned her by name, none of them were about her and her work in the field of public relations. On motion, the Petitioner cites to an unpublished district court decision, *Zizi v. Cuccinelli*, 2021 WL 2826713 (N.D. Cal 2021), which found that we were arbitrary and capricious in concluding that articles which focused on technology that the petitioner in that case developed were not about him. We note that in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

We further note that to the extent that the decision in *Zizi* considers the evidentiary value of the evidence to that petitioner's overall claim of extraordinary ability when evaluating it under this criterion, it goes against the ninth circuit's previous decision in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), which forms the basis of USCIS policy. As stated in our previous decision, the plain language of the regulation requires both that published material be about the individual and that it relate to their work in the field. In accordance with *Kazarian* and USCIS policy, consideration of whether this evidence, as part of the totality of the record, also shows that the petitioner meets the overall standard as an individual of extraordinary ability takes place only in the final merits determination. *Id.* at 1121. We will therefore not follow the reasoning in this district court decision.

The Petitioner argues that having her name listed as a point of contact on some of the articles shows that she led the related public relations projects, and the articles are therefore about her work. However, these articles only identify her as the press secretary for an organization or the contact person for an event, outside of the main text of the materials. As we stated in our previous decision, a passing

mention of the Petitioner is insufficient to make the articles about her. Accordingly, the Petitioner has not shown that she meets this criterion.

As mentioned above, the Petitioner does not challenge the adverse conclusions in our previous decision regarding the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), and (ix), relating to evidence of her lesser nationally or internationally recognized awards, membership in associations requiring outstanding achievements, and high salary or significantly high remuneration. Instead, she asserts that we erred in not considering the evidence she submitted in support of her claims to the criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii), which relate to her claimed original business contributions of major significance to her field and her leading or critical for organizations with a distinguished reputation.

We explained in our previous decision that because we concluded that she had not met at least one of the other criteria she had claimed, and thus could not meet the initial evidentiary requirement of at least three of the criteria, we were reserving adjudication on those two criteria. Where, as in this case, there is a clearly dispositive issue, we may decline to reach and thereby reserve any remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Because the Petitioner has not shown on motion that she meets any additional evidentiary criteria, she cannot meet the three criteria needed to meet the initial evidentiary requirement. In addition, she does not provide support to her argument that we erred in reserving those criteria in our previous decision. As such, we will again reserve those criteria.

III. CONCLUSION

The Petitioner has not submitted additional evidence in support of the motion to reopen, and it is dismissed for that reason. On motion to reconsider, 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 will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.