U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26666847

Date: MAY 3, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an information technology project manager, 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 approved the petition, but later revoked that approval on notice, under the provisions of section 205 of the Act, 8 U.S.C. § 1155, and 8 C.F.R. § 205.2. The Director concluded that the petition had been approved in error because the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision; a combined motion to reopen and reconsider; and a motion to reopen. The matter is now before us on a combined motion to reopen and reconsider under 8 C.F.R. § 103.5.

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 combined motion.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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) (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).

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). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition or the initial dismissal of the appeal. Instead, the filing is a motion to reopen and reconsider our most recent decision. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

III. ANALYSIS

The Petitioner worked as an IT manager for [redacted], when he filed the petition in 2016. He later worked as a lead business systems analyst for Emerson Automated Solutions, and then as manager of IT Systems and Administration for [redacted] Hotels.

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). Our prior decisions include a fuller discussion of the procedural history, but to summarize: we previously concluded that the Petitioner had satisfied two criteria: judging the work of others (8 C.F.R.

§ 204.5(h)(3)(iv)) and publication of scholarly articles (8 C.F.R. § 204.5(h)(3)(vi)). The Petitioner's first two motions centered on two other claimed criteria: membership in associations that require outstanding achievements (8 C.F.R. § 204.5(h)(3)(ii)) and high remuneration for services (8 C.F.R. § 204.5(h)(3)(ix)).

We dismissed the Petitioner's second motion in May 2022 for two reasons. First, the Petitioner did not establish that status as a senior member of the Institute of Electrical and Electronics Engineers (IEEE) requires outstanding achievements as judged by recognized national or international experts, as required by 8 C.F.R. § 204.5(h)(3)(ii). Second, the Petitioner's new evidence was too broad and general to establish that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field, as required by 8 C.F.R. § 204.5(h)(3)(ix). We also noted that, had the proceeding reached a final merits determination as described in *Kazarian*, the petition still would not be approvable because the record does not indicate that the Petitioner has achieved sustained national or international acclaim in his field and reached the very top of his field as required by section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

In his latest motion, the Petitioner maintains that he has satisfied the criterion relating to memberships.

In previous decisions, we acknowledged that IEEE selects senior members through review panels, with panelists selected "from the local IEEE Section." We concluded that the Petitioner had not shown that the panelists are nationally or internationally recognized experts. We also identified significant distinctions between the "senior member" and "fellow" grades of IEEE membership.

In his latest motion, the Petitioner states:

> According to IEEE website and guidelines, Senior member nomination panel . . . reviewers are recruited among Senior members, Life Senior members, and Fellows in the section where the meeting is to be held. . . . Senior members, Life Senior members and Fellow members of IEEE are all experts and experienced in their respective career fields. There are IEEE members who have won Nobel prizes in the past and some of them have served on the panel of reviewers.

This assertion is essentially a rephrasing of the Petitioner's earlier statement that "panel members are experts in their chosen fields." The regulation at 8 C.F.R. § 204.5(h)(3)(ii) does not merely require "experts"; it requires "recognized national or international experts in their disciplines or fields." The Petitioner's latest filing does not show that review panelists meet this much higher threshold.

IEEE convenes review panels six times a year to consider applications for senior member status. Materials submitted on motion indicate that "review panel meetings are held in various locations throughout the world," and "[a] panel of reviewers is recruited among Senior members, Life Senior members, and Fellows in the section where the meeting is to be held."[1] In our May 2022 decision, we concluded that this information indicates that each panel consists of local members. The Petitioner disputes this conclusion, stating: "IEEE is referring to the section (region) where the meeting is taking place and not local communities nor local city. IEEE has ten (10) regions." The materials submitted on

[1] https://www.ieee.org/membership/senior/review-panel.html.

motion refute the Petitioner's attempt to equate "sections" with "regions." A submitted printout from IEEE's website states that the organization has "343 Sections in ten geographic Regions worldwide."[2] The submitted evidence does not show that panel membership is limited to nationally or internationally recognized experts, or that reviewers are recruited from throughout regions rather than sections.

The Petitioner contends: "The only difference between a senior member and a fellow member is the number of years, which states that you have to be a Senior member for five (5) years before you can be nominated to be a fellow member." The Petitioner observes that he has been a senior member for over five years, and "as such, is qualified to be nominated to the fellow member category." But the Petitioner then quotes materials from IEEE that refute his argument.

The quoted materials state that only senior or life senior members are eligible to become fellows, but the IEEE does not require five years in either grade. Rather, they require "five full years (consecutive or not) of full IEEE membership *in any grade*."[3] More significantly, to qualify for elevation to IEEE fellow grade, a senior member must "[h]ave accomplishments that have contributed importantly to the advancement or application of engineering, science and technology, bringing the realization of significant value to society."[4] Candidates for senior member grade must meet the much lower threshold of five years of "significant performance," which may include "[s]ubstantial job responsibilities such as team leader, task supervisor, [or] engineer in charge of a program or project."[5]

For the reasons explained above, the Petitioner has not established that senior member grade in IEEE constitutes membership in an association in the field for which classification is sought, which requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. The Petitioner has not shown error in our May 2022 decision, to warrant reconsideration of that decision, and the evidence submitted on motion does not show proper cause to reopen the proceeding.

The remainder of the Petitioner's statement on motion concerns how his "work will substantially benefit prospectively the United States," as required by section 203(b)(1)(A)(iii) of the Act. Our May 2022 decision did not address the issue of prospective benefit, and therefore this discussion does not allege error that would warrant reconsideration of the May 2022 decision. Also, the discussion of substantial prospective benefit does not cite any new evidence as required for a motion to reopen.

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the prior motion. We will therefore dismiss the combined motion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[2] https://www.ieee.org/about/at-a-glance.html.
[3] https://www.ieee.org/membership/fellows/steps.html.
[4] *Id.*
[5] https://www.ieee.org/membership/senior/senior-requirements.html.