U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36061766

Date: FEB. 03, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a marketing executive, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he met the initial evidence requirements of the classification by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5 (h)(3) or through evidence of a major, internationally recognized award. 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).

The Director concluded that the Petitioner did not meet any of the evidentiary criteria, but in our previous decision we concluded that he had submitted evidence of a leading role with an organization having a distinguished reputation. On motion, the Petitioner submits additional evidence relating to several of the evidentiary criteria and asserts that these new facts establish eligibility. After consideration of each of the criteria to which this new evidence pertains, we conclude that it is insufficient to demonstrate that the Petitioner meets any of them and is eligible as an alien of extraordinary ability.

A. Lesser Nationally or Internationally Recognized Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." As with several other criteria which will be noted below, the Petitioner did not challenge the Director's decision regarding lesser nationally or internationally recognized awards on appeal. In that decision, the Director determined that in addition to the evidence of the Petitioner's degrees, diplomas, and scholarships, the evidence relating to the 2019 Summit Creative Awards did not establish that he meets this criterion. While the Director suggested the award may be nationally or internationally recognized, they found that the evidence showed that the Petitioner's employer, and not the Petitioner himself, received the award.

On motion, the Petitioner focuses solely on the Summit Creative Awards, and submits a new letter from the Head of Global Marketing & Communication for [redacted] his current employer. The letter states that the Petitioner is a leading member of the company's Video Marketing and Communication Department, and that he led the planning for the company's award submission, and "was responsible for overseeing the entire process, from creative planning and content production to global dissemination." The Petitioner asserts that the awarding organization's rules state that the award can only be given to a media and marketing team, not an auto maker like [redacted] and that USCIS policy allows for consideration of team awards.

We note that the webpages for the Summit Creative Award which were submitted in response to the Director's request for evidence (RFE) indicate that companies, departments, and individuals are eligible to receive the awards, although it limits eligible companies to advertising agencies, public relations firms, and others involved in creating advertising content. Also, while what appears to be a press release, but lacking publication information, indicates that [redacted] Video Marketing Department was a recipient of the silver award in the [redacted] category, the evidence of the award indicates that the recipient was [redacted] and does not name a specific department or individual.

Regarding USCIS policy, it states that team awards are not excluded from consideration under this criterion, provided that the evidence demonstrates that the petitioner is a recipient of the award. *See* 6 *USCIS Policy Manual* F.2(B)(1), www.uscis.gov/policy-manual. Such evidence may show that each member of the team received a trophy, certification, or medal, or was otherwise specifically named by the awarding organization. *Id.*, n. 19. Here, the record lacks evidence that the Petitioner was individually recognized by the Summit Creative Awards as part of the awarded team.

The Petitioner has not established that he received a silver Summit Creative Award, and thus does not meet this criterion. In addition, to the extent that the Director concluded that this award would qualify as nationally or internationally recognized, we withdraw that conclusion. The record lacks sufficient evidence indicating that these awards are recognized beyond the awarding organization's own website and the recipient's press release, whether published or not. Accordingly, for both of these reasons, the new evidence submitted with the motion does not demonstrate that the Petitioner meets this criterion.

B. Published Material About the Petitioner

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) seeks "[p]ublished 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." It also requires that such evidence includes "the title, date, and author of the material, and any necessary translation."

In our decision on appeal, we raised several issues regarding the evidence submitted under this criterion. One of these was the requirement that materials be accompanied by "any necessary translation." This requirement is based upon the regulation at 8 C.F.R. § 103.2(b)(3), which states that any document in a foreign language must be accompanied by a full English language translation. Also, the translator must certify that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. *Id.* We concluded that because the Petitioner did not submit a complete English language translation of several documents as required, we could not determine whether they supported his claim.

On motion, the Petitioner submits what appears to be a transcript of a segment broadcast on China Central Television (CCTV), along with an English document which he certifies as a translation of the transcript. He also submits what he asserts are "new and improved print version of published articles" which are "fully or more fully translated into English." But despite these assertions and those the Petitioner makes in the translation certifications, the translations of the three articles are not complete, as evidenced by the ellipsis in the translations and a comparison of the structure of the source material with the translations. Because the Petitioner did not submit complete English language translations of these articles as required, we accord them no weight as we cannot determine whether it supports his claim.

As for the transcript of the CCTV broadcast, the translation does not appear to be incomplete and can be considered. It is accompanied by screenshots of the broadcast segment, including one which appears to be a photo of a television screen showing a CCTV logo and other live information. The transcript shows that the Petitioner was one of several individuals interviewed for the segment, and he is identified as [redacted] and provides two brief quotations about conditions in the Chinese auto industry. Regarding whether this material relates to the Petitioner's claimed field of endeavor, media and communication, we noted that the record did not demonstrate the value of this interview to the field. On motion, the Petitioner refers to a recent policy change, USCIS Policy Alert [PA-2024-24], *Extraordinary Ability Criteria Clarification* (Oct. 2, 2024) which included the following update to the *USCIS Policy Manual*:

- Removes language suggesting published material must demonstrate the value of the person's work and contributions in order to satisfy the published material criterion, as such requirements are outside the plain regulatory language of the criterion.

While this updated policy guidance was published after the issuance of our previous decision, we will apply the guidance in the *USCIS Policy Manual* as it currently exists in this decision. The broadcast segment, [redacted] focuses on the competitiveness of the Chinese auto industry, and the Petitioner was interviewed regarding his opinion

on that subject. Neither the overall published material nor the Petitioner's comments pertain to the field of media and communications.

On motion, the Petitioner asserts regarding other evidence of published materials that the relevance of the material is "obvious" since it was published in the course of his work in the media and communications field. However, this criterion focuses on the subject matter of the material, not the means by which the material was published. The fact that the Petitioner was identified as a writer or journalist in the segment does not mean that the segment or any part of it was about him and his work as a journalist. While the Petitioner has complied with the translation requirement for this single published material, it does not show that he meets this criterion.

C. Participation as a Judge of the Work of Others in the Field

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) calls for "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought."

The Petitioner initially submitted evidence regarding his positions and responsibilities as Chief Writer and Director of the News Department for [redacted] and Director, Global Marcom Strategy and Planning for [redacted] In our previous decision, despite noting that the Petitioner had waived this issue on appeal, we disagreed with the reasoning presented in the Director's decision. But we concluded that the job responsibilities described in this evidence did not involve judging the work of others in the Petitioner's field, as they did not mention the type of work reviewed, that the Petitioner had been invited to participate as a judge, or that he had actually participated as a judge.

On motion, the Petitioner submits additional evidence that he asserts shows that he has participated as a judge of the work of others in his field for his current employer. He first refers to the previously mentioned letter from [redacted] which states that he evaluated the work of employees under his supervision as well as "media and communication professionals in other departments at [redacted] and beyond." But this statement lacks specifics that address the deficiencies we previously expressed, and is therefore insufficient to meet this criterion.

The Petitioner also submits emails between the Petitioner and his colleagues at [redacted] regarding promotional video projects for the company's press releases and websites. However, these emails show that the Petitioner was making everyday business decisions regarding these projects, not that he had been invited to judge the work of others in his field. For example, an employee asks him and another executive to "help start the PR process" for a subscription, to which the Petitioner replies "approved." In another email chain, the Petitioner gives approval for suggestions made by a contractor or service provider regarding the placement of a video on the [redacted] website. In both cases, the Petitioner exercised his authority as an executive, and there is no indication that he evaluated another's work or applied a set of criteria in making these decisions. For these reasons, this evidence is insufficient to show that he meets this criterion.

D. Original Contributions of Major Significance in the Field

The regulation at 8 C.F.R. § 204.5(h)(3)(v) seeks "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In order to satisfy this criterion, a petitioner must establish that not only have they made original contributions, but that the contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

With his motion, the Petitioner submits new translations of previously submitted articles that he asserts show that he has made original contributions of major significance in the field of media and communications. The first is a complete translation of an article he authored which reports on a possible acquisition of [redacted]. In response to our conclusion that this report had not been shown to of major significance to his field of media and communications, the Petitioner asserts that none of the articles that followed his in reporting on this subject would have been written but for his article. But he does not reference any evidence in response to our observation that none of the following articles that he submitted directly cited his article, or provide any further explanation to support this assertion. And while we acknowledge that the article is an original creation in the Petitioner's field, the record does not show that it remarkably impacted that field or was otherwise of major significance.

The Petitioner also submits a partial translation of another previously submitted article, published on the [redacted] website, which is about the [redacted] organized by the website's [redacted] The Petitioner asserts that this evidence shows that [redacted] which he founded, "played a significant role in promoting the [redacted] use in general in the world's most populous country." Aside from this evidence not complying with translation requirements, the Petitioner does not explain how, even if his assertions are correct, his part in this event was a contribution of major significance to the field of media and communications. Whether the event is viewed as a promotional event for a specific automaker or the electric vehicle industry in general, the new evidence does not show that it influenced others in the field, or that this type of event was novel in some way and has since been implemented more widely.

For all of the reasons discussed above, we conclude that the new evidence submitted on motion does not establish that the Petitioner meets this criterion.

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.

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner refers to the *USCIS Policy Manual* and asserts that we did not correctly apply its provisions

in our decision. He begins by challenging our final merits determination, asserting that we did not consider the record in its entirety. However, because we concluded that the Petitioner had met the requirements of only one of the evidentiary criteria, relating to his leading role for organizations having a distinguished reputation, we were not required to, and did not, conduct a final merits determination. Per the discussion below, we conclude that the Petitioner has not established that our previous decision incorrectly applied law or policy and was incorrect based upon the record.

A. Lesser Nationally or Internationally Recognized Awards

We considered the Petitioner's assertions regarding the Summit Creative Award in conjunction with the motion to reopen above. He has not established that we incorrectly applied law or policy with regard to this criterion.

B. Membership in Associations Requiring Outstanding Achievements

The regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's 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."

In our previous decision, we concluded that the Petitioner had not challenged the Director's decision regarding this criterion, and thus had waived his claim. On motion, the Petitioner asserts that an awards panel he served on for the 2013 Conference of [redacted] of China constituted "an association or committee," and that the Director erred in focusing on the status of the conference and awards ceremony as associations.

We initially note that in addition to waiving this criterion on appeal, the Petitioner provided no additional evidence in support of his claim when responding to the Director's RFE. The sole evidence submitted in support of this criterion was a partially translated article posted on the [redacted] website which listed the Petitioner as one of 11 media judges on a "professional panel of judges." Aside from the disqualifying issue with the translation, this evidence provides no further information about the panel and selection process for its members. The Petitioner focuses on the word "professional" in the article, but this single word is insufficient to show the requirements for placement on this panel. Further, a requirement relating to employment in a profession is not sufficient to establish that an association requires outstanding achievements of its members. *See generally* 6 *USCIS Policy Manual* F.2(B)(1).

Also, while the regulation does not define the term "association," the examples given in the *USCIS Policy Manual* (professional associations and scientific societies with multiple levels of membership) indicate that they are something more permanent than an ad hoc panel for a single conference. *Id.* As such, the Petitioner has not demonstrated that the Director's decision regarding this criterion violates relevant regulation or policy and was incorrect based upon the evidence discussed.

C. Published Material About the Petitioner

As with the awards criterion discussed above, we considered the Petitioner's assertions regarding this criterion in conjunction with out discussion of the new evidence submitted. The Petitioner has not

submitted sufficient evidence to support his assertion that CCTV constitutes major media, and even if he had, the evidence does not establish that the broadcast segment was about him and his work in the field of media and communication.

D. Judge of the Work of Others in the Field

In addition to the new evidence presented that has already been discussed above, the Petitioner accuses us of lying in our previous decision regarding the duties described in the offer letter from [redacted] But as we stated, the evidence provides insufficient detail regarding who or what he is expected to judge in the course of his work, and does not indicate specific instances where he participated as a judge of the work of others in his field. And as discussed above, the new evidence provides examples of the Petitioner exercising his executive authority to make decisions, not judge the work of others in media and communications. While we agree that USCIS policy does not expressly eliminate job-related duties from consideration under this criterion, and expressed this in our previous decision, the evidence presented in this case is insufficient to meet this criterion.

E. Original Contributions of Major Significance to the Field

In addition to the new evidence and assertions discussed above regarding this criterion, the Petitioner also asserts that the conclusions we reached in our previous decision concerning other claimed contributions, including his artistic work and founding of organizations, were "unfounded." But he does elaborate, instead going on to assert that "excuses about the lack of sufficient detail or explanation made the goal of establishing eligibility impossible to reach." As explained at the outset, it is the petitioner's burden to establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. While the Petitioner suggests that the large amount of evidence he submitted should be sufficient to meet the requirements of this criterion, it is the quality of the evidence submitted, not the quantity, that supports eligibility. *See generally* 6 *USCIS Policy Manual* F.2(B).

F. Authorship of Scholarly Articles in the Field

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) calls for "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media."

As the Petitioner did not challenge the Director's decision regarding this criterion on appeal, we concluded that he had waived this issue. In his motion, the Petitioner states that his claim was not based upon his books or articles written for [redacted] but on a presentation he gave at a conference. The evidence to support this claim consists of a translated webpage which introduces a speech the Petitioner gave at the 12th China [redacted] Forum on [redacted] 2014, but does not include a transcript of the speech. Despite the Petitioner's assertions, this evidence does not show that a speech the Petitioner gave was published in any medium, let alone in a professional, major trade, or other major medium, and does not establish that such a speech's content involved the field of media and communications. Accordingly, the Petitioner has not established that our previous decision or the Director's was based on an errant interpretation of law or policy regarding this criterion.

G. Display of the Petitioner's Work at an Artistic Exhibition or Showcase

The regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases."

As with the previous criterion, the Petitioner did not contest the Director's decision regarding this criterion, so we deemed it to have been waived. The Petitioner submitted evidence that his paintings had been displayed at the 2015 [redacted] and at a gallery in [redacted] In their decision, the Director concluded that the evidence did not establish that this work was in the Petitioner's field of media and communication.

On motion, the Petitioner asserts that the only issue to be resolved is whether his work that was displayed at exhibitions was in his field. But the evidence does not establish that the display of his paintings at an automotive trade show and an event where he discussed career paths with attendees were artistic exhibitions or showcases, as these events have not been shown to be artistic in nature. *See generally* 6 *USCIS Policy Manual* F.2(B)(1). As the record includes evidence which shows by a preponderance that the Petitioner's paintings were displayed in a solo exhibition in an art gallery in [redacted], we will focus on that evidence in determining whether this work was in his field of endeavor.

In his brief, the Petitioner presents many of the same arguments he did in his response to the Director's RFE, asserting that the field of media and communication is an interdisciplinary field which includes art. We note that when responding to the RFE, the Petitioner included a page from the *Occupational Outlook Handbook* (OOH), published by the BLS, which listed "media and communication" as one of several occupation groups. However, a list of the occupations in this broad group does not include artists such as painters, which are included under the "arts and design" occupational group. Further, the record does not include evidence demonstrating that the display of his paintings at the art gallery in [redacted] was in any way associated with his employment in the media and communications field. For these reasons, the Petitioner has not established that our decision or the Director's incorrectly concluded that he does not meet this criterion.

III. CONCLUSION

The Petitioner also asserts that he meets the evidentiary criterion at 8 C.F.R. § 204.5(h)(ix) which requires evidence that he has commanded a high salary, or significantly high remuneration, in relation to others in his field. Because the Petitioner has met only of the required three evidentiary criteria, and is therefore ineligible for classification as an alien of extraordinary ability, we need not reach, and therefore reserve, the issue of whether he meets this criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. 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 motions 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.