U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35578420

Date: JAN. 29, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a data analytics leader, 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 denied the petition, concluding the Petitioner did not establish, as required, that he met at least three of the ten initial evidentiary criteria for this immigrant classification. We dismissed a subsequent appeal. Although we concluded that the Petitioner met the initial evidence requirements by satisfying three evidentiary criteria, we determined the record did not demonstrate that he has achieved sustained national or international acclaim and is among that small percentage of individuals at the very top of his field. 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.

II. LAW

A. The Extraordinary Ability Classification

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if: they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the country to continue working in the area of extraordinary ability; and their entry into the United States would substantially benefit the country. 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 provide evidence of a one-time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide documentation that they meet 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 demonstrates that they meet 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 national or international acclaim and demonstrates that they are 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 Amin v. Mayorkas,* 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation").

B. Motion Requirements

A motion to reconsider must state the reasons for reconsideration; be supported by any pertinent precedent decision to establish that the decision was based on an incorrect application of law or policy; and establish that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). 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).

II. ANALYSIS

The issues before us on motion are (1) whether the Petitioner has demonstrated our decision to dismiss his appeal was based on a misapplication of law or policy and was incorrect at the time we issued the decision; and (2) whether he has submitted new facts, supported by documentary evidence, to warrant reopening.

Although the Petitioner has stated reasons for reconsideration and provided new evidence in support of his combined motions to reopen and reconsider, the record does not establish his eligibility for the classification sought. Accordingly, we will dismiss both motions for the reasons discussed below.

A. The AAO's Decision

In our decision dismissing the Petitioner's appeal, we agreed with the Director's determination that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (viii) by submitting evidence that he had participated as a judge of the work of others in his field and served in a leading or critical role for an organization with a distinguished reputation. In addition, contrary to the Director's conclusion, we determined that he satisfied a third criterion by providing evidence he has authored at least one

scholarly article in a qualifying publication under 8 C.F.R. § 204.5(h)(3)(vi).[1] Accordingly, we proceeded to a final merits determination, wherein we concluded that the totality of the evidence did not show the Petitioner had achieved sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

In concluding the Petitioner did not demonstrate the required sustained acclaim, we emphasized that the evidence in the record is "primarily limited to a short period of time" immediately preceding filing of the petition in October 2023. Specifically, we observed the Beneficiary's documented judging activities all occurred in 2023, the articles he authored were published in 2023, and he was admitted as a senior or fellow member of two associations in his field in 2023. We acknowledged that evidence relating to the criteria at 8 C.F.R. § 204.5(h)(3)(viii) and (ix) dated back to 2021 but concluded that the record as a whole did not demonstrate his sustained national or international acclaim. In addition, beyond considering the dates of the evidence provided in support of the petition, we explained that the Petitioner did not meet his burden to demonstrate how his achievements to date placed him among the small percentage of individuals at the very top of his field.

B. Motion to Reconsider

On motion, the Petitioner contends that we omitted "a significant portion of the evidence" from our final merits analysis, and that our failure to consider "any and all potentially relevant evidence in the record" was contrary to agency guidance for conducting final merits determinations, as published in the *USCIS Policy Manual*. In support of his claims, the Petitioner highlights specific evidence in the record and asserts that he demonstrated his "countless achievements and leadership over a prolonged period of time." We will discuss this evidence in turn below.

The Petitioner asserts that we made a "clearly erroneous factual assumption" when evaluating evidence of his employment with consumer technology company [redacted] We concluded that he had served in a leading or critical role with this organization since August 2021 when he assumed the role of "Associate Vice President, Head of Analytics and Data Science." The Petitioner emphasizes that the previously provided letters confirm that he served in a critical role upon joining [redacted] in 2017 and clearly made contributions of significant importance to the company's success prior to assuming the associate vice president position in 2021. The Petitioner's contention that his performance in a leading or critical role with [redacted] preceded his 2021 appointment to a senior management or executive role is persuasive; each of the letters detailing the Petitioner's experience with this company explains the nature and importance of his contributions dating back to 2017.

However, the record offers insufficient support for the Petitioner's claim that his work with [redacted] since 2017 resulted in him gaining "a reputation of impeccable leadership and ingenuity" in his field that can be equated with sustained national or international acclaim. The Petitioner has not explained or documented how his contributions to his employer's success were acknowledged or recognized outside the organization, particularly in his earlier roles with the company. While the letters from [redacted] and his former colleagues at the company offer high praise for his work-related contributions

[1] We also addressed the Petitioner's evidence submitted in support of the criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (ix). Although we agreed with the Director that the Petitioner did not demonstrate that he met these two criteria, we considered his memberships in associations and evidence related to his salary in the final merits determination.

and his technical and business expertise in the data analytics field, but they do not provide sufficient support for a determination that he garnered external recognition for his leading or critical roles at a level consistent with sustained national or international acclaim in the field. Further, the record does not contain evidence that that [redacted] recruited and hired the Petitioner for a critical role in 2017 based on his existing reputation and national acclaim in the field.

The Petitioner also maintains that we previously overlooked evidence related to his judging activities which "confirms that he is recognized as a knowledgeable Data Analytics Leader at the forefront of the industry." Specifically, he states that if he "did not have sustained acclaim from years of prior leadership experience, he would not have been chosen from the vast pool of applicants to join a Judging Panel of International Executive Leaders." He maintains that although his documented participation as a judge of the work of others occurred in 2023, his judging activities "serve[] as a testament to the reputation he garnered from his sustained leadership throughout prior years."

The Petitioner highlights his participation as a judge for the 2023 [redacted] Awards, stating that his selection as a judge "strongly suggests that [he] is widely recognized and respected for his achievements and insight in the field." He emphasizes that the competition's panel of judges represented well over a dozen countries, that the [redacted] Awards are covered by major media outlets such as *The Guardian*, and that he was personally selected to assess submissions by major international institutions including the World Bank, CNN, National Geographic, Reuters and USA Today.

We have reviewed the evidence in the record pertaining to the [redacted] Awards. The record supports the Petitioner's assertion that [redacted] is a prestigious competition in the data visualization field that draws entries from well-known organizations. A description of the judging panel for the 2023 awards indicates that the panel was composed of "a mix of data visualization experts from different domains [and] countries," and included directors, researchers, visual journalists, developers, founders, designers and engineers, among other professionals in the field. The record establishes that the [redacted] Awards rely on volunteer judges but does not contain independent evidence from the sponsoring organization explaining or documenting the criteria, standards or processes it uses to select judges for its panels. As such the evidence does not support the Petitioner's claim that only widely recognized individuals who are at the top of the field are selected to participate as judges for the [redacted] Awards, or show that his selection to participate served as recognition as his sustained achievements in the field.

The Petitioner makes similar claims regarding his performance as a judge for the [redacted] Competition in 2023. He emphasizes that he was included on a judging panel that included "the Managing Director from Deloitte Consulting," a "Consulting Solutions Director from Microsoft" and other prominent individuals. The record includes the biographies of members of the 2023 judging panel but does not include information or evidence about [redacted] process or criteria for selecting judges. A screenshot from the competition's web site states that "Phase Two" of this annual competition for undergraduate students is "evaluated by a panel of practitioners representing various industries who value business analytics." The Petitioner's claim that his selection for this judging panel is evidence that he has already sustained a "stellar reputation" that places him at "the forefront of the industry" is not adequately supported by the objective evidence in the record.

Finally, the Petitioner contends that we gave insufficient weight to the criteria used by the British Computer Society (BCS) and the Institute of Electrical and Electronics Engineers (IEEE) to grant him membership in these associations. In our decision, we concluded that even if the Petitioner had demonstrated that his membership in one or both associations satisfied the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) and was indicative of his national or international acclaim in the field, the evidence would be insufficient to demonstrate *sustained* acclaim because he was granted senior membership in IEEE in February 2023 and fellow membership in BCS in June 2023. On motion, the Petitioner emphasizes that although he was granted membership to these associations in 2023, he was required to demonstrate achievements and contributions spanning a period of at least five years to meet the associations' respective membership criteria.

The evidence demonstrates that the application process that resulted in the Petitioner's membership in BCS and IEEE involved a review of his career achievements to date, and in that respect, could be considered an acknowledgement of his past work in the field. Nevertheless, the tangible recognition for such professional achievements is the grant of membership itself, which in this case occurred in 2023 with respect to both BCS and IEEE. The materials from BCS indicate that its fellow members enjoy additional opportunities for "wider exposure and recognition" compared to professional members, including eligibility to join the BCS board or committees, to present at BCS events and contribute to BCS publications, to participate in the association as a mentor or assessor, and to join policy forums, among others. The evidence does not establish, for example, that the title of BCS Fellow itself is demonstrative of an individual's sustained recognition or acclaim in the field, or a distinction that automatically places a successful applicant for BCS fellowship in the small percentage at the very top of the field.

Based on the foregoing discussion, the Petitioner has not demonstrated that we misapplied law or USCIS policy in our prior decision dismissing his appeal, nor has he established that our decision was incorrect based on the evidence in the record at the time of our decision. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, we will dismiss the motion to reconsider.

C. Motion to Reopen

In support of his motion to reopen, the Petitioner submits new supplemental evidence intended to further document his sustained acclaim and professional achievements. This evidence includes copies of "increment and promotion letters" he received from [redacted] in 2018 and 2019 and an offer letter from [redacted] for the position of Sr. Business Intelligence Engineer, dated February 2021. While this evidence supports the Petitioner's claim that he held critical roles with [redacted] prior to 2021, the Petitioner does not provide sufficient context for his claim that his career progression within this company reflects his sustained acclaim and recognition in the field. Similarly, the record does not establish how the Petitioner's brief period of employment as an engineer with [redacted] in 2021 resulted in or is indicative of his reputation within the industry. The Petitioner does not adequately explain the significance of this evidence and how it supports his assertions that he has achieved sustained national or international acclaim in his field.

The Petitioner also provides screenshots of seven online comments posted by readers in response to his article titled [redacted] which was published by *Towards Data Science* in 2023. In addition, he posts a comment posted on his LinkedIn page from a participant in the

[redacted] Competition, who requested his guidance in achieving success in the analytics and data science field. The Petitioner maintains that these positive responses to his work as an author and judge evidence his receipt of "recognition as a Data Analytics Leader."

While the individuals who commented on the Petitioner's 2023 article offer praise for his work, this small sampling of feedback he received from readers does not offer sufficient support for a determination that he has achieved sustained acclaim in the broader field based on his publication activities. Evidence in the record indicates that *Towards Data Science* is a respected online publication in the Petitioner's field that has published work by "thousands of contributors"; it does not demonstrate that the publication only selects work authored by highly acclaimed professionals whose expertise and accomplishments place them at the top of the data science field. The Petitioner has not provided sufficient context for his claim that his authorship of an article in this publication in 2023, and the reader response to his article, have significantly contributed to his sustained national or international acclaim or recognition in the field.

The Petitioner also submits evidence demonstrating he had several opportunities to participate as a speaker at conferences and roundtables in 2023, including: (1) e-mails from [redacted] confirming his participation as a faculty speaker at the [redacted] (2) invitations from The [redacted] to participate in a [redacted] posted to the Petitioner's LinkedIn page; (3) an e-mail from [redacted] confirming the Petitioner's upcoming participation as a discussion leader for [redacted] monthly roundtable discussions; and (4) an invitation posted on the Petitioner's LinkedIn page requesting his appearance as a guest on the [redacted] podcast. As noted by the Petitioner, the *USCIS Policy Manual* provides that "unsolicited invitations to speak or present at nationally or internationally recognized conferences in the field" may be "generally indicative" of [a petitioner's] high standing and recognition for achievements in the field. *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual.

Here, the record does not contain evidence that the Petitioner received "unsolicited invitations" from [redacted] however, the submitted documentation confirms his participation in conferences and roundtables held by these organizations in 2023, the same year the petition was filed. We view this participation favorably, but, even when reviewed with the previously submitted evidence, it is not sufficient to demonstrate the Petitioner's sustained acclaim in his field. The record does not contain evidence that the Petitioner participated in, or was invited to participate in, conferences in his field prior to 2023. Further, while the two invitations sent to the Petitioner via LinkedIn appear to be unsolicited, there is insufficient evidence that the representatives from The [redacted] and the [redacted] podcast directed these invitations to the Petitioner based on his reputation as a recognized leader in the data science field. For example, the invitation from the [redacted] podcast begins with the statement "I noticed your job title and would like to connect . . ." while the invitation from [redacted] which invites the Petitioner to an event focused on compliance and cybersecurity, suggests that the requestor was not familiar with the Petitioner's background and area of expertise in data analysis.

Finally, the Petitioner requests consideration of additional professional achievements that post-date the filing of the petition. Specifically, he provides evidence that he successfully applied for fellowship in the Institution of Engineering and Technology (IET) in November 2023, and evidence that he was named a winner of a [redacted] at the [redacted] Awards.

The Petitioner submits information regarding the criteria used by IET to make determinations on fellowship membership applications, noting that this level of membership requires "recent significant achievements" for a period of at least five years. The record on motion does not contain sufficient evidence regarding the [redacted] Award and its selection criteria to demonstrate the significance of his appearance on this [redacted] list or the national or international recognition associated with the award.

Overall, the newly submitted evidence supports our previous determination that the Petitioner achieved recognition for his expertise in his field in the months preceding his filing of the petition in 2023 and has maintained that recognition as of 2024. His evidence of memberships in professional associations, judging activities, speaking engagements, and publications are all dated within this period and, when considered together, indicate that his reputation and recognition in the industry are on the rise. Although there is no definitive time frame on what constitutes "sustained," the record here, including the new evidence submitted on motion, does not demonstrate the Petitioner's achievements to date are indicative of the required sustained national or international acclaim or that he has achieved a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). The Petitioner's evidence confirms that he is respected among his peers and that he has recently gained recognition for his achievements outside of the organization that employs him. The evidence provided on motion suggests that he will likely continue to build that on that reputation in the future. However, considering the full measure of the Petitioner's demonstrated achievements, the level of acclaim he has documented, and the extent to which his achievements have been recognized in the field over time, he has not demonstrated his eligibility for classification as an individual of extraordinary ability as of the date he filed this petition. He has not submitted extensive documentation exhibiting that he has already attained a level of expertise placing him among that small percentage who have risen the very top of the field of endeavor.

III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, this evidence does not establish his eligibility for classification as an individual of extraordinary ability. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy, or that it was incorrect 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.