U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-T-

DATE: DEC. 11, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a lawyer, 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 Texas Service Center denied the Petitioner's Form I-140, Immigrant Petitioner Alien Worker, concluding that he had not satisfied at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3). We upheld that decision on appeal and reaffirmed our findings in eleven subsequent motion decisions.[1]

The matter is now before us on combined motions to reopen and reconsider. The Petitioner maintains that he meets the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). He also asserts that he has provided comparable evidence for the membership criterion.[2]

Upon review, we will deny both motions.

I. LAW

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] *Matter of H-T-*, ID# 1161068 (AAO May 15, 2018) was our most recent decision in this matter.
[2] *See* 8 C.F.R. § 204.5(h)(4).

II. ANALYSIS

In our previous decisions denying the Petitioner's motions, we determined that he did not meet the initial evidence requirements under 8 C.F.R. § 204.5(h)(3). While the Petitioner established that he has served as a judge of the work of others in his field under 8 C.F.R. § 204.5(h)(3)(iv), he did not submit evidence demonstrating that he met two additional criteria.

A. Motion to Reconsider

On motion, the Petitioner contests our findings relating to the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (v), and (viii), but he has not met the requirements for a motion to reconsider as he has not demonstrated that we erred in our previous analysis based on the record before us. Further, the motion to reconsider does establish that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy.

B. Motion to Reopen

In support of his motion to reopen, the Petitioner offers evidence relating to the criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (viii), which we will address below.

> *Documentation 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.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner asserts that his participation in [redacted] meets this criterion. He presents an October 2009 email from [redacted] for the [redacted] thanking the Petitioner "for your interest in [redacted], which is a day of meetings for a small delegation of the [redacted] Board of Governors and Section leaders. Since it is by invitation only, I will add you to a list if there is space available." In addition, he provides eight lists of [redacted] delegation members for 2011 – 2018 identifying him as an [redacted] participant and his single-day [redacted] access pass for 2018. The evidence of the Petitioner's participation in 2011 and later post-dates the filing of the petition and therefore cannot be considered for establishing his eligibility. *See* 8 C.F.R. § 103.2(b)(1). Nevertheless, he has not demonstrated that his participation in this annual event involving [redacted] members constitutes membership in an association in the field requiring outstanding achievements of its members, as judged by recognized national or international experts.

Furthermore, with respect to the Petitioner's request that we consider his participation in [redacted] as comparable evidence under 8 C.F.R. § 204.5(h)(4), this regulation allows for comparable evidence if the listed criteria do not readily apply to his occupation.[3] A petitioner should

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140*

explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[4]

Here, the Petitioner has not shown why he cannot offer evidence that meets at least three of the ten criteria. The fact that the Petitioner did not provide documentation that fulfills at least three is not evidence that a lawyer could not do so. As discussed, the Petitioner maintains that he meets four criteria. Moreover, the Petitioner has not shown that lawyers cannot present evidence relating to the other criteria such as nationally recognized awards for excellence and high salary.[5] As such, the Petitioner has not established that he is eligible to meet this criterion through the submission of comparable evidence.

Regardless, the Petitioner has not demonstrated that his participation in is comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), as claimed. For example, the record does not show that his involvement in the required outstanding achievements, as judged by recognized national or international experts in the field. The Petitioner has not demonstrated that the documentation he claims as comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) is of the same caliber as the evidence required by this regulation.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner argues that he has performed in a leading or critical role for the and the He states that he "has been serving as 'Additional Representative'. of the to the since January 2010 and that he "is the association's only Additional Representative." He submits a January 2018 letter from executive director of the requesting "a for the following member of my organization: [the Petitioner], Additional Representative." In addition, the Petitioner provides his grounds pass. He also presents a March 2018 letter from Chair-Elect of the ABA, thanking the Petitioner for "volunteering" and appointing him and four other individuals "as Vice Chairs of the of the for the term running from August 10, 2018 to August 10, 2019."[6] The aforementioned letters and grounds pass do not establish the Petitioner's eligibility at the time filing. *See* 8 C.F.R. § 103.2(b)(1).

Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 12 (Dec. 22, 2010), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.

[4] *Id.*

[5] *See* 8 C.F.R. § 204.5(h)(3)(i) and (ix).

[6] This letter indicates that vice chairs are "well positioned to become Committee Co-Chairs next year, if you are interested in a greater leadership role within your Committee and the Section."

Regardless, this documentation is not sufficient to demonstrate that the Petitioner has performed in a leading or critical role for the [redacted] the [redacted] or the [redacted] For example, the evidence does not indicate how his role is situated within their organizational hierarchy, nor has he otherwise shown that serving as an additional representative or vice chair of a sectional committee constitutes a leading role for the aforementioned organizations. In addition, the Petitioner has not demonstrated that he has contributed to these organizations in a way that is of significant importance to the outcome of their activities so as to establish his role was critical.

For the above reasons, the documentation submitted on motion does not establish that the Petitioner meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3).

III. CONCLUSION

The Petitioner has not established that our previous decision was incorrect based on the record before us, nor does his new evidence on motion demonstrate that he qualifies as an individual of extraordinary ability.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of H-T-*, ID# 1816301 (AAO Dec. 11, 2018)