U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-

DATE: JUNE 15, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a fashion and glamour photographer,[1] seeks classification as an individual of extraordinary ability in the arts. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner did not satisfy, as required, at least three of the ten initial evidentiary criteria. We subsequently dismissed his appeal, finding that he met only one of the ten criteria.[2]

The matter is now before us on combined motions to reopen and reconsider.[3] The Petitioner submits a brief, asserting that our decision was "erroneous, arbitrary and bad interpretation of the law" and maintains that we did not "giv[e] proper weight to the submitted evidences [*sic*]." He further claims that he presented "documentary evidences [*sic*] in all ten regulatory criteria." He, however, has not offered any documentation on motion.

Upon review, we will deny the 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.

[1] The Petitioner explained in his response to the Nebraska Service Center Director's request for evidence that "glamour photography is a genre of photography wherein subjects are portrayed in erotic poses ranging from fully clothed to nude."

[2] *See Matter of R-S-*, ID# 664599(AAO Nov. 16, 2017).

[3] On March 9, 2018, the Petitioner filed a second petition, SRC 18 112 50477, which the Director of the Texas Service Center approved on March 22, 2018.

§ 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

In addition, section 203(b)(1)(A) of the Act makes visas available to foreign nationals with extraordinary ability if:

> (i) the alien has 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,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's 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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 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 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 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Motion to Reconsider

On motion, the Petitioner asserts that he received awards and prizes that constitute "one time achievement of a major, international recognized award," because they "no doubt, bear national importance or top in the field," and are "truly comparable . . . evidences [*sic*] for his eligibility." *See* 8 C.F.R. § 204.5(h)(3), (4). The record does not support his assertions and he has not demonstrated that we erred in our prior decision, in which we concluded that he did not allege or establish his receipt of a major, internationally recognized award.

As the Petitioner did not establish his receipt of a major, internationally recognized award, he must therefore satisfy at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). In our decision dismissing his appeal, we found that he met the display at artistic exhibitors or showcases criterion, under 8 C.F.R. § 204.5(h)(3)(vii). On motion, the Petitioner initially states that he presented documentation relating to all ten criteria, but then claims that he satisfied the following five criteria relating to: (1) receipt of lesser nationally or internationally recognized prizes or awards, 8 C.F.R. § 204.5(h)(3)(i); (2) membership in associations that require outstanding achievements of their members, 8 C.F.R. § 204.5(h)(3)(ii); (3) participation as a judge of the work of others, 8 C.F.R. § 204.5(h)(3)(iv); (4) original contributions of major significance in the field, 8 C.F.R. § 204.5(h)(3)(v); (5) leading or critical role for organizations and establishments, 8 C.F.R. § 204.5(h)(3)(viii); and (6) a high salary or other significantly high remuneration for services, 8 C.F.R. § 204.5(h)(3)(ix).

While the Petitioner specifically alleges on motion that he satisfied the six criteria mentioned above, he has not substantiated his claims or established that we erred in our previous decision. As relating to the prizes or awards criterion, he does not point to any evidence that confirmed his prizes or awards were recognized on a national or international level. *See* 8 C.F.R. § 204.5(h)(3)(i). As relating to the membership in associations criterion, he does not reference any documentation that showed how he became a member of any organizations or that verified these entities required outstanding achievements of their members, as judged by recognized national or international experts. *See* 8 C.F.R. § 204.5(h)(3)(ii). As relating to the participation as a judge criterion, he does not discuss any documents that established he judged the work of others in photography or in an allied field. *See* 8 C.F.R. § 204.5(h)(3)(iv). As relating to the original contributions criterion, although the record showed that he was an experienced photographer, it did not illustrate that he had made contributions of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(v). As relating to the leading and critical role criterion, the Petitioner claims to have "played critical role in establishing [redacted] in [redacted] but the criterion requires that he had performed a leading or critical role for qualifying organizations or establishments. He has not shown that [redacted] constituted an organization or establishment. *See* 8 C.F.R. § 204.5(h)(3)(viii). Finally, as relating to the high salary criterion, he does not identify documents that confirmed his high salary or other significantly high remuneration as compared to others in the field of photography. *See* 8 C.F.R. § 204.5(h)(3)(ix). To the extent that he maintains he meets other

criteria, he has not pointed to any evidence substantiating his claim or demonstrated that we erred in our previous decision.

The Petitioner's conclusory statements that he satisfied at least three of the ten criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), without explaining how we erred in our decision, and his repeating of arguments he previously made on appeal, do not meet the requirements for a motion to reconsider the matter. He has not established that our previous decision was based on an incorrect application of law or policy or that it was incorrect based on the evidence in the record of proceedings at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). We will therefore deny his motion to reconsider the matter.

B. Motion to Reopen

We will similarly deny the Petitioner's motion to reopen the matter. A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner has not presented either any new facts or new evidence in support of his eligibility for the classification. As such, he has not satisfied the requirements for a motion to reopen.

III. CONCLUSION

The Petitioner's motion to reconsider does not demonstrate that our previous decision was incorrect, and he has not provided any documentation in support of his motion to reopen or established his eligibility for the classification.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of R-S-*, ID# 1243229 (AAO June 15, 2018)