U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37423156

Date: JUNE 20, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a visual artist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality 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.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not satisfy at least three initial evidentiary criteria. We dismissed a subsequent appeal, similarly concluding that the record does not satisfy at least three initial evidentiary criteria. We then dismissed a combined motion to reopen and motion to reconsider. The matter is now before us on a second combined motion to reopen and motion to 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 combined motion.

I. ANALYSIS

We incorporate by reference our analysis in our decisions on the appeal and on the prior combined motion to reopen and motion to reconsider. By way of summation, SCOPS determined that the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." However, SCOPS determined that the record does not satisfy the other criteria under which the Petitioner claimed eligibility, specifically the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), (viii)-(ix). In our decision on the Petitioner's appeal, we concluded that, in addition to satisfying the criterion at 8 C.F.R. § 204.5(h)(3)(vii), the record also satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires "[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." However, similar to SCOPS, we determined that the record does not satisfy the other criteria under which the Petitioner had claimed eligibility with SCOPS, specifically the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (v), (viii)-(ix).

The Petitioner then filed a combined motion to reopen and motion to reconsider, which we dismissed. We determined that, because the Petitioner did not state new facts and submit documentary evidence, the motion did not satisfy the requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). We also determined that, because the Petitioner did not establish that we misapplied a law or policy, the motion did not satisfy the requirements of a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3).

A. Motion to Reopen

A motion to reopen "seeks a new hearing based on new or previously unavailable evidence." *Matter of O-S-G-*, 24 I&N Dec. 56, 57-58 (BIA 2006) (citing *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991)). A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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).

Now, on a second motion to reopen, the Petitioner reasserts eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(vi), "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media," as he asserted in the prior combined motion. However, as with the prior motion to reopen, the Petitioner does not submit documentary evidence in support of this motion. Rather, he states that "the evidence that [he] authored scholarly articles in the field existed at the time of the initial filing, and thus, should be considered new facts." More specifically, he indicates that "evidence was provided for this category with the petition as well as the [r]esponse to the [request for evidence (RFE)]" that SCOPS issued, although he concedes that he "did not argue [his] authorship of scholarly articles" satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(vi) until after SCOPS denied his Form I-140, Immigrant Petition for Alien Workers.

As we indicated in our decision on the prior combined motion, the Petitioner's reference to information already in the record—which he submitted in support of his Form I-140 and in response to SCOPS' RFE—does not state new facts. Rather, it requests a new decision based on the record at the time of a prior decision, which is the purpose of a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3) (requiring a movant to establish that a prior decision was incorrect based on the evidence of record at the time of the underlying decision). Because the Petitioner does not state new facts to be provided in the reopened proceeding, the motion does not satisfy the plain language requirements of a motion to reopen, there is no basis for reopening the proceeding, and the motion to reopen will be dismissed. *See* 8 C.F.R. §§ 103.5(a)(2), (4).

B. 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). Because the scope of a motion is limited to the prior decision, we will review only the latest decision in these proceedings. 8 C.F.R. §§ 103.5(a)(1)(i)-(ii).

On motion to reconsider, the Petitioner asserts that we imposed novel requirements "not supported by the Policy Manual guidelines or plain meaning of the regulations." Specifically, the Petitioner

references our "claim[] that the evidence 'does not discuss or indicate the recognition of the fellowship in the field,'" and he states that "nowhere in the Policy Manual or regulations does it require the Petitioner to submit such evidence to meet [the criterion at 8 C.F.R. § 204.5(h)(3)(i)]." The Petitioner further states that "the fact that [the [redacted]] has significant press coverage in major media outlets such as *Advocate*" and Artnet establishes the fellowship's "national or international recognition," as required in part by the criterion at 8 C.F.R. § 204.5(h)(3)(i). The Petitioner also asserts that "federal case law" requires us to conclude that his "conferences and lecture seminars at the prominent universities and institutions, constitute 'authorship of scholarly articles in the field,'" contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

The criterion at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Stated another way, a petitioner must document receipt of prizes or awards, the prizes or awards must be nationally or internationally recognized, and the prizes or awards must have been for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The full sentence in our prior decision, to which the Petitioner objects in the motion to reconsider before us now, is as follows: "The evidence, for instance, does not discuss or indicate the recognition of the fellowship in the field or otherwise reflect the field's view of the fellowship as a nationally or internationally recognized prize or award." Thus, our reference to whether the record "discuss[es] or indicate[s] the recognition of the fellowship in the field" was an example of how the record may establish whether the prize or award in question is nationally or internationally recognized. Contrary to the Petitioner's assertions on motion to reconsider, the criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires petitioners to establish that prizes or awards in question are nationally or internationally recognized. Therefore, the Petitioner has not established how the selected fragment of one sentence in our decision misapplied the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i), when considered in its full context.

Next, we need not determine whether the [redacted] has sufficient national or international recognition because, regardless, the Petitioner does not assert on motion—and the record does not support the conclusion—that the Petitioner received the fellowship "for excellence in the field of endeavor," as required by the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i). The Petitioner reasserts that the "fellowship 'is by invitation only.'" As we explained in our prior decision, "while the Petitioner asserts that applications are 'by invitation only,' the Petitioner did not show how this establishes the fellowship as a nationally or internationally recognized prize or award for excellence in the field." Relatedly, although the Petitioner objects to our observation that the record does not establish the selection process for awarding the fellowship, the selection process is material to determining whether the fellowship is "for excellence in the field of endeavor," as required by the criterion at 8 C.F.R. § 204.5(h)(3)(i), rather than being awarded for any other possible reason.

Next, regarding the criterion at 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner cites *Gulen v. Chertoff*, No. 07-2148, 2008 U.S. Dist. Lexis 54607, 9-10 (E.D. Pa. July 16, 2008), which he summarizes as having concluded, "where the beneficiary's work was the 'subject of international conferences of scholars' the authorship of scholarly articles criterion was met." He also cites the USCIS Policy Manual, which similarly states that examples of scholarly article authorship include published conference

presentations at nationally or internationally recognized conferences. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

Gulen v. Chertoff is an unpublished district court decision arising in a circuit other than the Second Circuit's jurisdiction, in which the Petitioner resides. In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court, even in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis need not be followed as a matter of law. *Id.* In addition, as the published decisions of the district courts are not binding on us outside of that particular proceeding, the unpublished decision of a district court has even less persuasive value. Given that the Petitioner does not reside within the circuit with jurisdiction over the district court that issued the unpublished decision he references on motion to reconsider, it bears minimal persuasive value in this matter.

Even if we were to consider *Gulen* as persuasive in this matter, the Petitioner overstates its holding. The full context of the district court's analysis is that the petitioner in that case authored theological, political science, and Islamic studies articles in a body of scholarly work that "is prominent on the syllabi of graduate and undergraduate courses at major American colleges and universities . . . and has been the subject of international conferences of scholars," supporting the conclusion that he met the criterion at 8 C.F.R. § 204.5(h)(3)(vi). *Gulen*, 2008 U.S. Dist. Lexis 54607 at 9-10, *supra*. The Petitioner in this case does not establish that he has authored scholarly articles that are prominent on the syllabi of graduate and undergraduate courses at major American colleges and universities, in order to compare the facts of his case to those in *Gulen*.

We acknowledge that the Policy Manual provides relevant information regarding the criterion at 8 C.F.R. § 204.5(h)(3)(vi), when a claim of eligibility under that criterion is properly made. However, as we explained in our decision on the Petitioner's prior combined motion, we do not recognize the Petitioner's claim of eligibility under this criterion first raised on appeal because he had adequate notice and reasonable opportunity to raise this claim before SCOPS both at the time of filing the Form I-140 and in response to SCOPS' RFE, which he declined to do. The Petitioner conceded that he did not raise this claim of eligibility prior to SCOPS' decision, stating on appeal, "The Original Petition did not argue [the Petitioner satisfies the criterion of] authorship of scholarly articles." Although the Petitioner identifies a policy in the Policy Manual relevant to determining whether the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(vi), he does not identify a relevant law or policy we may have misapplied regarding our decision not to recognize his claim first raised on appeal. Because the Petitioner does not establish that we misapplied a law or policy regarding our decision not to recognize his claim of eligibility under the criterion at 8 C.F.R. § 204.5(h)(3)(vi), the issue of whether the record satisfies that criterion is moot.

Because the Petitioner does not establish that our prior decision was based on an incorrect application of law or policy, the motion does not satisfy the requirements of a motion to reconsider; therefore, it will be dismissed. *See* 8 C.F.R. §§ 103.5(a)(3)-(4).

II. CONCLUSION

The Petitioner does not provide new facts supported by documentary evidence to warrant reopening the proceeding. In turn, the Petitioner does not establish that our prior decision, based on the record at that time, incorrectly applied a relevant law or policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.