U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-O-R-D-L-

DATE: MAR. 24, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a former professor at [redacted] seeks classification as an individual of extraordinary ability in education. 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 Form I-140, Immigrant Petition for Alien Worker, and two subsequent motions. The Petitioner appealed the matter to us. We dismissed the Petitioner's appeal, and reaffirmed that decision in five motion adjudications. The Petitioner has filed a motion to reconsider. Upon review, we will deny the motion.

I. LAW

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). A petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying documentation that meets at least three of the ten categories 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 submits qualifying evidence under at least three criteria, we will then determine whether the totality of 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.[1]

[1] *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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "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").

A motion to reconsider must establish that our 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). In addition, a motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of USCIS or Department of Homeland Security policy.

II. ANALYSIS

In our previous decision denying his fifth motion, we determined that the Petitioner did not state any new facts and his evidence did not overcome the grounds of denial from our prior decision. Specifically, we found that the Petitioner's argument that we never requested additional evidence or afforded him the opportunity to personally explain his situation did not meet the requirements of a motion to reopen. In addition, we concluded that his submission of an inquiry response from the Office of the Citizenship and Immigration Services Ombudsman did not demonstrate his eligibility for classification as an individual of extraordinary ability.

The Petitioner contends in support of his current motion that we misapplied and misinterpreted the law and cites to *Zadvydas v. Davis*, 533 U.S. 678 (2001) and *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). *Zadvydas* involved the indefinite detention of immigrants, and *Yick Wo* involved a discriminatory statute. He does not, however, establish how those cases relate to the issues in our prior decision.

In addition, the Petitioner summarizes his documentary evidence for the regulatory criteria and requests that we review his documentation again. A motion to reconsider is based on an *incorrect application law or policy*. 8 C.F.R. § 103.5(a)(3). A request to reanalyze documentation without showing how we incorrectly applied law or policy does not meet the requirements of a motion to reconsider. Moreover, as discussed in our previous decisions, we thoroughly analyzed the Petitioner's documentation and concluded that he only met two of the regulatory criteria, of which he must meet at least three.

The Petitioner also points out that oral arguments are allowed on motion under 8 C.F.R. § 103.5(a)(7). However, USCIS has sole authority to grant or deny a request for oral argument, and the Petitioner has not identified any unique factors or issues of law that cannot be adequately addressed in writing. Accordingly, the request for oral argument is denied. *See* 8 C.F.R. § 103.3(b). Finally, the Petitioner submits an academic evaluation of his transcripts and degrees. However, he did not demonstrate how the submission of his educational credentials demonstrates error in our previous decision in order to meet the requirements of a motion to reconsider. Even if we considered his educational documents in a motion to reopen, which is based on documentary evidence of *new facts*, he did not show how it relates to the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

The Petitioner has not established that we incorrectly applied law or USCIS policy in our prior decision.

ORDER: The motion to reconsider is denied.

Cite as *Matter of A-O-R-D-L-*, ID# 331324 (AAO Mar. 24, 2017)