U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-E-

DATE: NOV. 30, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, who works in the field of "creativity as it relates to public policy," seeks classification as an individual of extraordinary ability. 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 Petition for Alien Worker, concluding that he had not satisfied any of the initial evidentiary criteria, of which he must meet at least three. We dismissed his appeal on the same basis and denied three subsequent motions to reconsider.[1]

The matter is now before us on a fourth motion to reconsider.[2] 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). The implementing 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 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

[1] *See Matter of E-E-*, ID# 119715 (AAO Jan. 12, 2017) for our most recent decision.

[2] Although the Petitioner indicates on his Form I-290B, Notice of Appeal or Motion, that he is filing a motion to reopen, his supporting brief identifies his filing as a motion to reconsider. In addition, a motion to reopen is based on evidence of new facts. 8 C.F.R. § 103.5(a)(2). Here, the Petitioner does not submit new evidence or discuss new facts in his brief. Accordingly, the Petitioner's motion does not meet the requirements for a motion to reopen, and we will treat it as a motion to reconsider.

acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[3]

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 U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security.

II. ANALYSIS

In our most recent decision on the Petitioner's third motion, we determined that the Petitioner did not overcome the grounds of our prior adjudication. Specifically, the Petitioner did not demonstrate that we erred in law or policy by determining that his second motion was untimely filed. In addition, we discussed the Petitioner's request for reconsideration of our initial decision dismissing his appeal based on "evidence submitted earlier in support of this petition." Because the Petitioner did not show that our prior decision was incorrect based on the record at the time and did not cite to any law, regulation, or precedent to support an improper application of law or policy, we found that he had not met requirements for a motion to reconsider. Moreover, we noted that the Petitioner did not provide a statement regarding whether our prior decisions were the subject of any judicial proceedings.[4] Accordingly, we denied the Petitioner's third motion to reconsider.

In the instant motion, the Petitioner does not address our latest decision denying his third motion to reconsider. Instead, the Petitioner references the Director's original decision denying his petition and our first decision dismissing his appeal, and he contends that "the purpose of this Motion to Reconsider is to request reinterpretation of the evidence material that I submitted."

As noted above, a motion to reconsider must include specific allegations as to how we erred as a matter of fact or law in our prior decision, and it must be supported by pertinent legal authority. The record reflects that in each of our decisions we thoroughly analyzed the Petitioner's documentation and articulated the reasons why his evidence did not satisfy the evidentiary criteria. In the instant motion, the Petitioner does not argue that we erred in our most recent decision, nor does he cite to

[3] *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).

[4] The regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding."

any relevant law, regulation, or precedent to demonstrate an improper application of law or USCIS policy in our previous decision.[5] Accordingly, the Petitioner has not met the filing requirements for a motion to reconsider.

III. CONCLUSION

The Petitioner's motion does not demonstrate that our previous decision was based on an incorrect application of law or policy, and it does not establish that he qualifies as an individual of extraordinary ability.

ORDER: The motion to reconsider is denied.

Cite as *Matter of E-E-* ID# 583775 (AAO Nov. 30, 2017)

[5] In addition, we note that the instant filing lacks the required statement regarding whether our prior decisions were the subject of any judicial proceedings, as required under 8 C.F.R. § 103.5(a)(1)(iii).