MATTER OF B-B-H-

DATE: OCT. 1, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a drama director, seeks classification as an individual of extraordinary ability in the arts. This first preference classification makes immigrant visa 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 Petitioner's Form I-140, Immigrant Petitioner Alien Worker, finding he did not satisfy the initial evidentiary criteria applicable to individuals of extraordinary ability, either a major, internationally recognized award or at least three of ten possible forms of documentation. We dismissed his subsequent appeal finding that although the Petitioner met three criteria, he did not establish sustained national or international acclaim, that he is among the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.[1]

The matter is now before us on a motion to reconsider and a motion to reopen. Upon review, we will deny the motions.

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 B-B-H-*, ID# 935324 (AAO Mar. 6, 2018).

acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[2]

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.

II. BACKGROUND

In dismissing the appeal, we determined that the Petitioner satisfied three of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv), artistic display under 8 C.F.R. § 204.5(h)(3)(vii), and high salary under 8 C.F.R. § 204.5(h)(3)(ix). Moreover, we conducted a final merits determination in which we reviewed the record as a whole, including the evidence the Petitioner submitted under other claimed criteria. Based on this review, we found that the Petitioner did not establish his sustained national or international acclaim, that he is among the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

In the Petitioner's motion to reconsider, he argues that his evidence satisfied five additional criteria. In his motion to reopen, the Petitioner presents additional documentation relating to the awards criterion under 8 C.F.R. § 204.5(h)(3)(i) and provides copies of previously submitted documentation.

III. ANALYSIS

A. Motion to Reconsider

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 or Department of Homeland Security.

The Petitioner contends that we erred in not finding that the Petitioner met five additional criteria. He does not, however, argue that our decision was based on an incorrect application of law or policy.

[2] *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).

Instead, he makes general assertions relating to our evaluation of his evidence in our prior decision. For instance, in his discussion regarding the membership criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), he asserts that "[c]ontrary to the AAO's conclusion, [he] is a member of organizations, which are nationally recognized and of high repute" and references exhibits contained in the record. However, disagreeing with our conclusions without establishing that we erred as a matter of law or policy or pointing to precedent decisions that contradict our analysis of the evidence is not a ground to reconsider our decision.

Moreover, the Petitioner makes numerous arguments that mirror his previously submitted appellate brief referring to the Director's original decision. For example, the Petitioner cites to the Director's findings under the published material criterion relating to his failure to provide properly certified English language translations. We note that Petitioner provided certified translations in support of his appeal, and this was not an issue in our decision. Here, the Petitioner's contentions pertain to the Director's decision, and therefore do not show how our dismissal of his appeal was incorrect as a matter of law or policy.

In addition, while he contends he met the requirements of specific criteria, the Petitioner does not contest our final merits analysis in which we discussed his accomplishments and weighed the totality of the evidence, including the documentation relating to criteria that he did not satisfy, and concluded that the record as a whole did not demonstrate his eligibility for the classification sought. For example, as it relates to his judging experience, the Petitioner asserts that "[h]e was a top director of Drama 20 years ago, which shows that he was a person with extraordinary ability at the begging [sic] of his career." Moreover, he claims that that he "has participated as judge of others in his field of expertise owning primarily to his outstanding work and reputation as director." In our decision, we found that the Petitioner did not demonstrate that his two instances of judging regional competitions, approximately 20 years earlier, reflected the required sustained national or international acclaim. Further, we determined that the Petitioner did not establish that his service as a judge of aspiring students or amateurs placed him in that small percentage at the very top of his field. The Petitioner has not shown how we erred in our examination of the evidence or incorrectly applied law or policy.

Further, regarding the artistic display criterion, the Petitioner states that he "agree[s] with the Service that [he] meets the criterion." In our final merits analysis, we found that although the Petitioner displayed is work at various venues, such as theatres and street plays, he did not demonstrate that his plays brought praise from critics, drew notable crowds, raised attendance, or were responsible for the success or standing of the event. Moreover, we indicated that his evidence did not distinguish his plays from others in his field or reflected a career of acclaimed in the field. The Petitioner, however, did not address these findings. As the Petitioner did not show how we misapplied the evaluation of his evidence regarding the artistic display of his work, he did not establish that we erred in our decision.

Also, relating to the high salary criterion, the Petitioner argues that we found him to meet the criterion but "failed to accept the documents to provide objective evidence of statistics comparing

his earnings to others in the same field." On the contrary, we determined that the Petitioner provided evidence showing that he earned a high salary among theatre directors in Nepal. However, we concluded that the record as a whole did not establish his sustained national or international acclaim or that he is among the small percentage at the top of his field. Again, the Petitioner did not demonstrate how we erred in law or policy.

For the reasons discussed above, the Petitioner has not demonstrated that our appellate decision was incorrect. We conducted a *de novo* review of the record on appeal, thoroughly analyzed the evidence, and ultimately concluded that while the Petitioner satisfied three of the evidentiary criteria, he did not establish the required sustained national or international acclaim for this highly restrictive classification. The Petitioner did not now show how we erred and did not support his motion with relevant precedent decisions to demonstration that we misapplied law or policy. Accordingly, the Petitioner did not satisfy the requirements for a motion to reconsider.

B. Motion to Reopen

Much of the documentation supporting the Petitioner's motion to reopen was previously submitted. A motion to reopen, however, must state new facts and be supported by documentary evidence. 8 C.F.R § 103.5(a)(2). Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts." As it relates to the awards criterion, the Petitioner provides new letters from representatives of the following organizations: [redacted] and [redacted] Each letter lists eight awards received by the Petitioner and states the following:

> The awards received by [the Petitioner] have national level recognition and geographical scope of the award is all over Nepal. Our organization also supervise the nominees selection committee as we are invited by the award organizing body gets particular national level acknowledgement from the announcement through various press release. Each of the awards is most awaited and talks of the concern among the national level drama production, media and among the public.
>
> We wish him for better future. If any questions you are welcome to ask at office hours.

We note that the identical language calls into question whether the letters were independently prepared by the authors, and therefore diminishes their probative value in establishing that the Petitioner's awards qualify for the criterion. Moreover, repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Further, the letters do not contain detailed, probative information that specifically addresses each award explaining how each one qualifies as a nationally or internationally recognized prize or award. For these reasons, the Petitioner did not demonstrate that he meets the awards criterion. In addition, the Petitioner did not show that his awards reflect his

sustained national or international acclaim and indicate that he is one of the small percentage at the very top of his field.

IV. 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 his eligibility for the benefit sought.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of B-B-H-*, ID# 1642778 (AAO Oct. 1, 2018)