U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-T-

DATE: OCT. 17, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a lawyer, seeks classification as an individual of extraordinary ability. *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 Texas Service Center denied the petition. He determined that the Petitioner did not satisfy the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which require documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria set forth under 8 C.F.R. § 204.5(h)(3)(i)-(x). We upheld that decision on appeal and reaffirmed our findings in nine subsequent motion decisions.

The matter is again before us on combined motions to reopen and reconsider. The Petitioner maintains that he meets the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii) and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). He further states that he has demonstrated his eligibility for the classification.

Upon review, we will deny both motions.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

To be eligible for this classification, a petitioner must show that he or she is a person of extraordinary ability. 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 meet his or her initial evidence requirements 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 satisfies at least three of the ten criteria

under 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 initial evidence, 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. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121-22 (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).[1]

II. ANALYSIS

In our previous decision denying the Petitioner's motions, we determined that he did not meet the initial evidence requirements under 8 C.F.R. § 204.5(h)(3). Specifically, while he satisfied the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv), he did not present documentation verifying that he met two additional criteria.[2] In the instant motions, he maintains that his status as a fellow of the [redacted] meets the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii) and that his work during a 2007 internship at an [redacted] office satisfies the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). In addition, he argues that under Rule 42(a) of the Federal Rules of Civil Procedure, we should consider evidence that postdates his filing of the petition to evaluate his eligibility. We will discuss these issues below.

A. Regulatory Criteria

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

A petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The Petitioner submits a certificate, indicating that in July 2016, six years after he filed the instant petition, the [redacted] selected him to be a fellow, "in recognition of exemplary dedication to the profession, commitment to the work of the [redacted] and support for the ideals and objectives of the [redacted] He, however, has not explained how his receipt of the certificate years after he filed the petition illustrates his eligibility for the classification at the time he filed the petition.

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[1] *See also 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").

[2] In addition, as discussed in our 2013 decision dismissing the Petitioner's appeal, the record does not establish his receipt of "a one-time achievement (that is, a major, international recognized award)." *See* 8 C.F.R. § 204.5(h)(3).

Regardless, the record lacks sufficient evidence on the selection process of fellows. One of the documents the Petitioner offers on motion states that Board of Directors selects fellows "because of the outstanding achievements and high character they have demonstrated in their legal careers." The same document indicates that fellows are those "who have demonstrated outstanding leadership in the profession and service to society." website provides that fellows are those who "have demonstrated outstanding dedication to welfare of their communities and to the highest principles of the legal profession." The Petitioner has not presented evidence establishing that "require[s] outstanding achievements of [its] members." Moreover, while he has submitted a list of Board of Directors, he has not included evidence verifying that the individuals who select fellows are "recognized national or international experts in their disciplines or fields." *See* 8 C.F.R. § 204.5(h)(3)(ii). In short, he has not shown that he may rely on a 2016 accomplishment to demonstrate his eligibility. In the alternative, his status as an fellow does not satisfy this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

On motion, the Petitioner references a letter from who supervised him during his internship at the of the from January to October 2007. He maintains that because he was "one of the very few official interns that had ever been allowed to serve beyond a six-month term limit," he has established his "critical role for the organization."[3] The record does not support his statement.

According to during the Petitioner's nine-month internship with "his main functions were to support the on a variety of [the organization's] principal projects." lists a number of his research projects, including some that "drew on his personal expertise in law and his knowledge of Chinese and far eastern cultures." She notes that "he completed his tasks efficiently requiring little supervision" and that "after fully completing the permissible term for internships he extended his tenure by working as a volunteer for a further three months." In an email from the internship program coordinator, which the Petitioner offers on motion, in March 2007, the organization had 170 interns.

As discussed in our previous decisions, while the Petitioner has illustrated his successful completion of his internship, he has not demonstrated that he performed a critical role for the or Specifically, as stated in our most recent decision, ' explains that the Petitioner contributed to various research projects but does not suggest that [he] had a significant impact on her office beyond [its] need for interns to complete assigned research." In addition, we discussed in our last decision that "an extension of his term may speak to the quality of his work," but it is insufficient to confirm his critical role for the organization.

[3] The Petitioner has not alleged or established that he performed a leading role for the or any of its components.

Moreover, although he has presented documents showing that the maximum internship term is six months, he has not provided evidence substantiating the significance of his status as a volunteer for an additional three-month period. In short, notwithstanding his six-month service as an intern and a three-month term as a volunteer, the Petitioner has not demonstrated he performed a critical role for either the or any of its components. He does not satisfy this criterion.

B. Federal Rules of Civil Procedure

The Petitioner has not cited to any legal authority demonstrating that the Federal Rules of Civil Procedure is applicable in this case. As explained in the United States Courts website, the Federal Rules of Civil Procedure "govern civil proceedings in the United States district courts."[4] The Petitioner has not pointed to any legal support showing that these rules apply to administrative proceedings, such as this one.

A review of the language of Rule 42(a), which the Petitioner has urged us to consider, further illustrates that it is inapplicable in this case. Specifically, Rule 42(a)[5] provides:

> Consolidation. If actions before the court involve a common question of law or fact, the court may:
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> (1) join for hearing or trial any or all matters at issue in the actions;
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> (2) consolidate the actions; or
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> (3) issue any other orders to avoid unnecessary cost or delay.

While the rule discusses what a court may do in cases that share a common question of law or fact, it does not mandate consolidation. In this case, the Petitioner has not demonstrated that we are a "court," or that even if we were a "court," which we are not, we must consider evidence that postdates his filing of the petition to evaluate his eligibility.

On the contrary, regulation at 8 C.F.R. § 103.2(b)(1), which is binding on us,[6] provides that a petitioner "must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication." As such, we may not

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[4] http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure, accessed on October 10, 2017, and incorporated into the record of proceedings.

[5] http://www.uscourts.gov/sites/default/files/rules-of-civil-procedure.pdf, accessed on October 10, 2017, and relevant pages incorporated into the record of proceedings.

[6] *See, e.g.*, *Panhandle Eastern Pipe Line Co. v. Federal Energy Regulatory Commission*, 613 F.2d 1120, 1135 (D.C. Cir., 1979) (holding an agency is bound by its own regulations); *Reuters Ltd. v. Federal Communications Commission*, 781 F.2d 946, 950 (D.C. Cir., 1986) (holding an agency must adhere to its own rules and regulations; *ad hoc* departures from those rules, even to achieve laudable aims, cannot be sanctioned).

consider evidence that postdates the Petitioner's filing of the petition, such as his status as an fellow, in this matter.

III. CONCLUSION

The evidence the Petitioner submits in support of his motions does not overcome the grounds underlying our previous decision or demonstrate his eligibility for the classification.[7] In addition, he has not established that our previous decision was based on an incorrect application of law or policy, or that the decision was erroneous based on the evidence in the record of proceedings at the time of the decision.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of H-T-*, ID# 595192 (AAO Oct. 17, 2017)

[7] The Petitioner has not submitted the required initial evidence. As a result, we need not provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20.