U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-T-

DATE: OCT. 17, 2019

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 in 2013, concluding that the Petitioner had not satisfied 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 listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). That same year, we upheld the Director's decision, and subsequently reaffirmed our findings in twelve motion decisions between 2013 and 2018.[1]

The matter is now before us on motion for the thirteenth time. The Petitioner has filed combined motions to reconsider and reopen, asserting that our "finding and conclusion was incomplete." He further alleges that his additional documentation establishes eligibility for three additional criteria.

Upon review, we will deny the combined motions to reconsider and reopen.

I. LAW

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.

[1] Our most recent decision in this matter is *Matter of H-T-*, ID# 1816301 (AAO Dec. 11, 2018).

II. ANALYSIS

A. Motion to Reconsider

On motion, the Petitioner asserts that we erred in our last decision because we did not consider his evidence relating to events occurring after the filing of his initial petition in 2010. As discussed in our prior decision regarding the membership criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner provided eight lists of "ABA [American Bar Association] Day at the UN [United Nations]" delegation members for 2011 – 2018 identifying him as an ABA participant and his single-day UN access pass for 2018. Moreover, relating to the leading or critical role criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii), he submitted a January 2018 letter from [redacted] executive director of the [redacted], requesting a "UN Grounds Pass" for the Petitioner. In addition, he presented a March 2018 letter from [redacted], chair-elect of the [redacted] thanking the Petitioner for "volunteering" and appointing him and four other individuals "as Vice Chairs of UN & International Organizations Committee of the [redacted] for the term running from August 10, 2018 to August 10, 2019."[2]

The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. §103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) ("Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become eligible under a new set of facts"). As his evidence related to events occurring after the filing of his petition, the Petitioner did not show that we erred as a matter of law or policy.

Furthermore, even though the above events occurred after his initial petition filing, we found that the Petitioner did not demonstrate that his participation in the annual "ABA Day at the UN" constituted membership in an association in the field requiring outstanding achievements of its members, as judged by recognized national or international experts. In addition, we determined that the Petitioner did not establish that his roles with [redacted] ABA, or the UN reflected leading or critical roles with organizations or establishments with a distinguished reputation. On motion, the Petitioner does not address these specific findings.

Finally, the Petitioner cites to two non-precedent decisions and argues that we "exercised discretion to review the records in the aggregate and make a conclusion." Again, the Petitioner contends that we should consider post-filing events. These decisions, however, were not published as precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. §103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguished based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Moreover, we review the record in aggregate when a petitioner submits either a one-time achievement or documents that meet at three of the ten criteria. Here, the Petitioner did not demonstrate that he received a major, internationally recognized award or fulfilled at least three of the ten categories of evidence. Furthermore, in reviewing the record in the aggregate, we examine the

[2] This letter indicated that vice chairs are "well positioned to become Committee Co-Chairs next year, if you are interested in a greater leadership role within your Committee and the Section."

evidence that establishes eligibility at the time of filing. *See* 8 C.F.R. §103.2(b)(1). Regardless, as discussed, his evidence did not show satisfaction of the membership and leading or critical role criteria.

For the reasons discussed above, the Petitioner has not demonstrated that we incorrectly applied law or policy in our latest decision, or that we erroneously adjudicated the benefit based on the evidence in the record of proceedings at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). Therefore, we will deny his motion to reconsider.

B. Motion to Reopen

We will similarly deny the Petitioner's motion to reopen the matter. Regarding the membership criterion, the Petitioner submits the UN's "2007 National Competitive Recruitment Examination For Junior Professional Officers" and supporting evidence and highlights that "[i]n instances where a large number of applications are received . . . the Board reserves the right to admit to the examination only the most qualified candidates based on a review of the qualifications which are over and above the minimum entrance criteria." In order to satisfy the regulation at 8 C.F.R. §204.5(h)(3)(ii), the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[3] Here, the purpose of the UN's recruitment exam is "for employment at United Nations offices" rather than for membership in an association. Moreover, the Board may reserve the right to hire junior professional officers when "a large number of applications are received" but is not a requirement, including when there is a smaller amount of applications. Furthermore, the Petitioner did not demonstrate that passing an examination represents "outstanding achievements" consistent with the regulatory criterion. In addition, the Petitioner did not establish that "membership" is judged by recognized national or international experts.

As it relates to the leading or critical role criterion, the Petitioner presents a February 2010 letter from [redacted] requesting a "UN Annual Pass" and a copy of his pass. In addition, the Petitioner submits documents pertaining to events occurring after the filing of his initial petition, such as the "Conference of the Parties to the United Nations Convention against Transnational Organized Crime" (October 2018), "ABA Day at the UN" (April 2013), "United Nations Forum on Business and Human Rights" (November 2018), and "The New Engine of Growth in Asia Conference: Investment and Technology" (October 2018). Again, as these pertain to events occurring after the filing of his initial petition, we will not consider them. *See* 8 C.F.R. § 103.2(b)(1).

Moreover, as it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[4] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

[4] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

is of significant importance to the outcome of the organizations or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[5] Here, the evidence the Petitioner provides on motion does not show that he performed in a leading or critical role for the [redacted], ABA, or UN at time he filed his petition. Furthermore, the evidence does not reflect that the Petitioner served in a leadership position or contributed to the success or standing of the organizations in a critical role.

In addition, for the first time, the Petitioner claims that he qualifies for the high salary criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ix) and presents a blank ABA "Request for Reimbursement of Expenses" highlighting that ABA members are subject to $100 for lodging and meals per day. Moreover, the Petitioner asserts that "there is no lodging reimbursement limit" for him and provides copies of checks from the ABA for 2011 – 2015. Again, the checks cover a period after the filing of his petition. *See* 8 C.F.R. § 103.2(b)(1). Moreover, the Petitioner did not explain how the blank expense form and checks support his assertion regarding his exemption to the reimbursement limit.

Furthermore, in order to meet the high salary criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.[6] However, the Petitioner did not offer comparative evidence for salary or remuneration of others in his field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner did not demonstrate that he commanded a high salary or significantly high remuneration for services in relation to others in his field.

As his evidence does not satisfy at least three of the evidentiary criteria, we will deny his motion to reopen.

III. CONCLUSION

The Petitioner has not shown that our previous decision was incorrect based on the record before us, nor does his new evidence on motion demonstrate that he has fulfilled at least three of the evidentiary criteria. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. §1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

[5] *Id.*

[6] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of H-T-*, ID# 4354769 (AAO Oct. 17, 2019)