U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-V-

DATE: OCT. 25, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an options market consultant and educator, 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 the Petitioner 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[1] and denied a subsequent motion to reopen.[2] The matter is now before us on 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). 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 acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[3]

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[1] *See Matter of N-V-D-*, ID# 17570 (AAO Aug. 23, 2016).

[2] *See Matter of N-V-*, ID# 149451 (AAO Feb. 17, 2017).

[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,

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 policy.

II. BACKGROUND

In dismissing the appeal, we determined that the Petitioner had not satisfied any of the following claimed regulatory criteria: memberships under 8 C.F.R. § 204.5(h)(3)(ii), judging under 8 C.F.R. § 204.5(h)(3)(iv), original contributions under 8 C.F.R. § 204.5(h)(3)(v), scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), leading or critical roles under 8 C.F.R. § 204.5(h)(3)(viii), high salary under 8 C.F.R. § 204.5(h)(3)(ix), and commercial successes under 8 C.F.R. § 204.5(h)(3)(x). In denying his motion to reopen[4], we found that the Petitioner's newly presented evidence only related to events occurring after the initial filing of his petition. *See* 8 C.F.R. § 103.2(b)(1). Therefore, we concluded that the motion to reopen did not contain new facts that supported eligibility at the time of filing. In addition, we noted that the Petitioner had not provided a "statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding," as required under 8 C.F.R. § 103.5(a)(1)(iii).

III. ANALYSIS

A. Judicial Proceeding Statement

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires the motion to 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." The Petitioner points out that he did include such a statement in his brief accompanying the motion to reopen, and the record confirms this. Accordingly, we withdraw our previous finding on this issue.

B. The Petitioner's Eligibility for the Benefit Sought

The Petitioner requests us to reconsider our previous decision denying his motion to reopen "because [it] was based on incorrect application of law and case law, and misrepresentation of evidence of record." He contends that the purpose of the documentation provided in support of the motion to reopen was to demonstrate he "was and is still eligible for the requested benefit at the time of filing the benefit request." As discussed in our prior decision and indicated above, the Petitioner presented

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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] A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2).

evidence that related to events occurring after the filing of his petition. *See* 8 C.F.R. § 103.2(b)(1). The evidence did not establish that he met at least three of the regulatory criteria at the time he filed his initial petition. Moreover, the Petitioner's motion to reopen brief did not state to which criteria, if any, the evidence related. Rather, the Petitioner generally claimed that his "motion to reopen should be carefully evaluated because [he] meets the criteria of an alien of extraordinary ability." Here, the Petitioner did not show that we incorrectly determined that his evidence pertained to instances post-dating his petition and did not satisfy at least three regulatory criteria.

In addition, the Petitioner states that he provided evidence reflecting that he meets at least three of the regulatory criteria, that he is at the top of his field, and that he seeks to continue to work in his field and will benefit the United States. Specifically, the Petitioner indicates that he "submitted ample documentation to USCIS (**60 Exhibits**) to establish at least three of the evidentiary criteria" (emphasis in original), and that we overlooked his recommendation letters from colleagues and members of the field in support of the original contributions criterion. We note that these arguments refer to our original decision dismissing the appeal, and therefore do not show how our denial of his motion to reopen was incorrect as a matter of law or policy.

Regardless, 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 the Petitioner did not satisfy any of the evidentiary criteria. As it pertains to the original contributions criterion that the Petitioner specifically mentions in his current brief, we carefully discussed his recommendation letters and explained how they did not establish eligibility for the criterion. The Petitioner has not shown that we erred in our findings regarding this criterion or any other claimed criteria. While he generally asserts that we overlooked evidence in the record, he has not specifically identified documentation that we disregarded or explained how it establishes eligibility. Further, although he cites to several court decisions, he does not explain how those cases indicate that we misapplied law or policy.

IV. 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 N-V-*, ID# 514840 (AAO Oct. 25, 2017)