U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33751624

Date: SEP. 5, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a mechanical engineer and researcher, seeks classification as an individual of extraordinary ability. 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed a subsequent appeal. The matter is now before us on motion to reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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 (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).

II. ANALYSIS

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The filing before us is a motion to reconsider our decision to dismiss the Petitioner's appeal. A motion to reconsider must establish that our prior decision was 1) based on an incorrect application of law or policy, and 2) incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). For the sake of brevity, we incorporate our previous analysis of the record and will repeat only certain facts and evidence as necessary to address the Petitioner's assertions on motion. Our previous decision in this matter was ID# 29963016 (AAO MAR. 4, 2024).

On motion, the Petitioner contests the correctness of our prior decision, in which we concluded that he met the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (vi), and (viii), relating to judging, scholarly articles, and leading or critical role. We also determined that the Petitioner did not meet the plain language requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(v), which mandates a showing that the Petitioner has made original contributions of major significance in his field of endeavor.

The Petitioner asserts on motion that we erred in concluding that he did not meet the criterion at 8 C.F.R. § 204.5(h)(3)(v). To satisfy the plain language of this criterion, a petitioner must establish that he has not only made original contributions, but that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

The Petitioner reiterates verbatim narrative provided in his appeal brief on motion, which we considered in dismissing the appeal, noting for instance:

> The record highlights an array of compelling material, including expert testimonials from distinguished figures such as [Dr. S. Dr. C- and Dr. B-], which underscore the uniqueness and significance of the Petitioner's research. Furthermore, it emphasizes the acknowledgment of the Petitioner's work being presented at international conferences and receiving substantial citations, solidifying its impact. The support from executives of major corporations, experienced engineers, and esteemed academics is also highlighted as attesting to the profound influence of the Petitioner's research on mechanical engineering and related industries.

In support of the motion, the Petitioner relies on the 6 *USCIS Policy Manual* F.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2, for the proposition that

"testimonials, letters and affidavits about [a] person's original work" and "documentation that the person's original work was cited at a level indicative of major significance in the field" are examples of "relevant evidence" to be submitted in support of this criterion. In this regard, the USCIS Policy Manual advises, in pertinent part:

> Published research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to others' work in that field, may be probative of the significance of the person's contributions to the field of endeavor.
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> . . . .
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> Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.

We agree that the provision of such evidence is relevant to a showing that a petitioner has met the plain language requirements of this criterion, but in this case the evidence falls short in establishing the instant Petitioner's eligibility for it. In our previous decision we acknowledged that the Petitioner's work has been published, cited, and presented at conferences, but concluded the dissemination of the Petitioner's work is not, in itself, sufficient evidence of its impact. While experts in the field may recognize the potential significance of the Petitioner's research within the field, the plain language of the criterion requires evidence of original contributions of major significance in the field. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). We determined in our prior decision that absent the submission of contemporaneous probative evidence to support the Petitioner's assertions, he did not adequately establish the significance of his research.

We also considered the evidence relating to the Petitioner's work while employed by L-, a company which specializes in pipe support design and production, noting the letter from L-'s product development supervisor credited the Petitioner with the successful movement of the design and manufacturing of cryogenic pipe supports from a facility in China to North America. We explained that this letter and a letter from another colleague highlighted the importance and value of the Petitioner's job performance during his employment, but the authors did not describe how his contributions as an employee led to impacts beyond their businesses. The letter authors repeatedly referred to the Petitioner's original and innovative approaches, but they did not describe those approaches or elaborate on any specific resulting outcomes. We determined these letters did not contain sufficient evidence to demonstrate the Petitioner's original contributions of major significance in the field.

Additionally, we analyzed and discussed other letters from the Petitioner's former instructors and colleagues which conveyed the high regard they hold of the Petitioner's work and the Petitioner himself as a thorough, knowledgeable, and creative individual. We acknowledged that the letters highlighted the potential prospective importance of the Petitioner's research to the agricultural, medical supply, and automotive industries. We also noted that while some letters included language

that alluded to the impact of the Petitioner's research and methodologies, they did not provide examples of the depth or breadth of that impact.

On motion, the Petitioner relies on the importance of the product lines he worked on while employed by L-, indicating that L- is a "world leader in piping support," with "major clients, including [E-, W-, and S-]. He emphasized that W- "is one of the world's most prominent suppliers of nuclear technology and [E-] is obviously one of the world's largest oil and gas companies." He asserts: "Is it not, by the preponderance of evidence standard, reasonable to assume then, that the Petitioner's work for [L-] is being implemented and impacting world-leading companies in crucial economic, environmental and national security sectors?"

Here, the Petitioner asks us to "assume," without the provision of contemporaneous probative evidence, that he has made original contributions of major significance to the field through his employment with a company that provides piping support to clients spanning a variety of industries in the United States. While the Petitioner asserts on motion that "the biggest energy companies in the world have been directly benefited by the Petitioner's 'original and innovative' work," the record falls short in demonstrating that his own work for L- constitutes original contributions of major significance to the field. *Matter of Chawathe*, *supra.*

For these reasons, the Petitioner has not met his burden on motion to show that our previous determination that he did not satisfy the plain language requirements of this criterion was based on an incorrect application of law or USCIS policy, or that our prior decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We affirm our previous determination that the Petitioner has not met this criterion.

Turning to the issues in the motion relating to our dispositive final merits determination in the previous decision, the Petitioner's motion brief does not directly address the conclusions from our March 2024 decision. In our final merits determination, we considered the totality of the evidence in the record and discussed our reasons for determining that the evidence did not establish that the Petitioner has risen to the top of his field and has sustained national or international acclaim in that field. We noted that the weight given to evidence depends on the extent to which such evidence demonstrates, reflects, or is consistent with the sustained national or international acclaim enjoyed by those at the very top of their field of endeavor. A lesser showing would be inconsistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

For example, we explained that the record reflected the Petitioner's participation as a judge on a single conference panel. While the coordinator of the conference spoke highly of the Petitioner's work on the panel, the record did not include documentation demonstrating that the conference was of such notability as to warrant the participation of an individual of national or international acclaim in his field. As another example, we concluded that the Petitioner has authored a research paper that appeared in a major trade publication and has presented his research at several conferences, but the record did not include evidence showing that his work has been widely applied in the field of mechanical engineering or has significantly impacted some element of that field.

On motion, the Petitioner does not specifically address the detailed analyses that we provided regarding the evidence he submitted in support of his assertions that he warrants a favorable final merits determination as an individual of extraordinary ability. The purpose of a motion to reconsider is to show error in the most recent prior decision, but the Petitioner did not do so here. Instead, he "take[s] issue with [our] inference that satisfaction of the [original contributions of major significance] criterion is required to satisfy the final merits determination of extraordinary ability," but he does not cite to law or policy in support of his proposition that we erred in analyzing this evidence as part of our final merits determination. Notably, we incorporated our discussion of the evidence submitted in support of this criterion into our final merits determination, but we did not state or imply in our prior decision that the Petitioner must satisfy more than three criteria either to meet the initial evidentiary requirements at 8 C.F.R. § 204.5(h)(3) or to satisfy the final merits determination requirements.

The Petitioner asserts through counsel that "while we believe that a correct application of the preponderance of the evidence standard establishes the Petitioner has made original contributions of major significance, we wish to highlight that the totality of the evidence, which satisfied the initial evidence requirements, does more likely than not demonstrate extraordinary ability." Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). To determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe*. We did so here, and explained in our prior decision why the evidence in the record did not establish the Petitioner's eligibility as an individual of extraordinary ability.

While the Petitioner may disagree with aspects of our analyses of the evidence in the prior decision, he has not shown on motion how we neglected to collectively consider the record under the preponderance of the evidence standard, or that we otherwise erred as a matter of law or policy in determining that he does not warrant a favorable final merits determination. We affirm our previous determination that he has not demonstrated through "extensive documentation" that his efforts have brought him the requisite sustained acclaim at a national or international level, such that we could conclude that he has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

On motion, the Petitioner also avers that "[w]e believe the Petitioner's prospective contributions to the benefit of the national interest, to wit, the nature of his work, carry unique merit and value. We ask that [USCIS] please consider this fact when reviewing the subject motion." It appears that the Petitioner is asking us on motion to ignore the regulatory requirement at 8 C.F.R. § 103.2(b)(1) which requires the Petitioner to show at the time of filing the petition, that he met the statutory and regulatory requirements for classification as an individual of extraordinary ability. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3). He suggests that he can establish his eligibility through "prospective contributions to the benefit of the national interest" that will accrue to the field at some unknown future date.

We lack the authority to waive or disregard any of the Act's requirements, as implemented by regulation. *See United States v. Nixon*, 418 U.S. 683, 695 (1974) ("So long as this regulation is extant it has the force of law."). Immigration regulations carry the force and effect of law. *United States ex*

rel. Accardi v. Shaughnessy, 347 U.S. 260, 265 (1954). Therefore, we cannot "credit" the Petitioner with unrealized accomplishments that may at some future point in time come to fruition and establish his eligibility. We affirm our previous conclusion that the balance of the record demonstrates the Petitioner's proficiency and promise in the field of mechanical engineering but does not contain evidence sufficient to demonstrate that at the time of filing the petition he enjoyed sustained national or international acclaim for his research or other work within the field.

On motion to reconsider, the Petitioner does not sufficiently address the specific adverse determinations and conclusions in our prior decision or establish that they were in error; rather, he primarily relies on vague and general assertions, alleging that we inappropriately analyzed evidence or employed an incorrect standard of proof. He has not established that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

ORDER: The motion to reconsider is dismissed.