U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20211842

Date: NOV. 29, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a tax accountant, 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, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. We dismissed the Petitioner's appeal from the Director's decision. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; who seek to enter the United States to continue work in the area of extraordinary ability; and whose entry into the United States will substantially benefit prospectively the United States. 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 can demonstrate international recognition of his or her achievements in the field 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 meets at least three of the ten criteria 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 meets the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, 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*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

III. ANALYSIS

From 1987 to 1989, the Petitioner worked as an international tax associate at [redacted] in [redacted] California. Since 1989, the Petitioner has worked for an affiliate of [redacted] China, where he is now vice chair and international tax partner. The Petitioner filed the petition in May 2019. Since that time, he has periodically entered the United States as either an F-1 nonimmigrant student or a B-2 nonimmigrant visitor, but he continues to reside primarily in [redacted]

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have satisfied six of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and

- (ix), High remuneration for services.

The Director concluded that the Petitioner met the criteria relating to published materials about him, authorship of scholarly articles, and leading or critical roles. In our appellate decision, we concluded that the Petitioner had met the criteria relating to authorship of scholarly articles, leading or critical roles, and high remuneration.

Because we determined that the Petitioner had submitted the required initial evidence, we proceeded to a final merits determination to evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of 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 a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[1]

In our appellate decision, we determined that the Petitioner has not established eligibility.

A. Motion to Reopen

In his motion to reopen, the Petitioner submits new evidence by which he seeks to augment the evidence he had previously submitted in order to satisfy the threshold criteria at 8 C.F.R. § 204.5(h)(3). For the reasons explained below, we conclude that the Petitioner has not shown proper cause to reopen the proceeding.

In our dismissal decision, we acknowledged the Petitioner's high-ranking position at [redacted] but concluded that the Petitioner's evidence is "not sufficient to demonstrate how this work has elevated his status within the broader field of business, or his specialization in taxation."

On motion, the Petitioner submits letters from two retired [redacted] executives. One of these individuals, a former international tax partner, briefly worked directly with the Petitioner, and afterward consulted him for advice regarding [redacted] tax matters." This individual asserts that the Petitioner reached "the highest levels of management and responsibility within [redacted] but provides few details and does not establish that the Petitioner earned recognition outside [redacted]

[redacted] former chief executive officer (CEO) states that by 2010 the Petitioner "was clearly established as [redacted] premier expert on all tax matters involved in U.S.-China business transactions. In addition, he was recognized broadly as one of the best international tax practitioners globally, as evidenced by his twice being named a 'Leading Individual in Taxation' by the International Tax Review." Noting that the Petitioner wrote articles and sat for "interviews with a wide variety of media," the former CEO also asserted that these "activities were by invitation based on recognition of his expertise by the industry . . . and those invited must have arrived at the summit of their profession."

[1] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

The record does not support the claim that *International Tax Review* (*ITR*) named the Petitioner as a "Leading Individual in Taxation." In our prior decision, we stated: "the evidence showing that the Petitioner was named as one of several tax experts in [redacted] in *International Tax Review*'s 'World Tax Rankings' in 2009 does not set him apart from others so named, or from those taxation experts who work in other parts of the world."

On motion, the Petitioner does not identify any published material from *ITR* in the record that names the Petitioner as a "Leading Individual in Taxation." An email message from *ITR*'s commercial editor indicates that the Petitioner "was profiled as part of [redacted] leadership profile in *International Tax Review*'s World Tax rankings for [redacted] in 2009." Those rankings pertained to firms rather than individuals. The Petitioner's initial submission included a four-page printout from those rankings, which identifies [redacted] as one of five [redacted] tax firms in [redacted] Within that printout, a two-paragraph profile of [redacted] names three company officials and states that the Petitioner is one of two officials who "are regularly involved in discussions with government bodies for the development and interpretation of new rules and regulations." The document does not refer to the Petitioner as a "Leading Individual in Taxation" or present itself as a ranking of such individuals.[2]

The undocumented claim about *ITR*'s World Tax rankings influences our conclusions about the overall reliability of the newly submitted letter. Where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). We must view in this light of the former CEO's uncorroborated assertions about the significance of the Petitioner's interviews and authorship of articles. The record does not contain statements from the media outlets that interviewed the Petitioner, or the publishers of outlets that carried his articles, indicating selection of authors or interviewees based on an individual's high ranking in their field.

The record likewise lacks support for the Petitioner's assertion on motion that his "recognition in the field is further validated by the fact that he was invited to serve as a member of the Taxation Committee of [redacted] General Chamber of Commerce" [redacted]. The evidence of the Petitioner's committee service consists of a previously submitted letter from a deputy CEO of the [redacted] who confirmed that the Petitioner was a "member of good standing with the Committee" from 2004 to 2010. The Petitioner did not submit evidence to show the requirements for committee membership or otherwise provide details as to how the Petitioner joined the committee and the significance of that membership. The letter points to the Petitioner's *local* prominence in the [redacted] financial community, without establishing wider recognition at the national or international level that the statute and regulations demand.

The Petitioner submits copies of three "recent articles in which the Petitioner was interviewed and quoted regarding different important business issues." The Petitioner asserts that these articles illustrate "his own status as a tax expert in the business field."

[2] The Petitioner had originally claimed that this brief mention in *ITR*'s World Tax rankings constitutes "an award for excellence in the field of taxation." The Director concluded that the Petitioner had not shown his receipt of any award, and the Petitioner did not pursue the claim on appeal.

A 2015 article from *Forbes* mentions the Petitioner once, but there is no indication that *Forbes* interviewed him directly. Instead, the article refers to a quotation that had already appeared in another publication, stating that the Petitioner "told the South China Morning Post that tax authorities will especially be looking at outbound service payments." A 2020 article from *Asian Investor* includes comments from the Petitioner concerning the possible impact on U.S. investors of a newly passed security law. Neither of these articles focuses on the Petitioner. We note that the *Asian Investor* article was published after the petition's filing date in 2019 and therefore could not establish eligibility as of the filing date required by 8 C.F.R. § 103.2(b)(1).

A 2018 article in *Diplomat* features an interview with the Petitioner, discussing infrastructure investment. The article provides the Petitioner's title and indicates that '[redacted] is one of the world's [redacted] accounting firms," but does not refer to the Petitioner as a leading or acclaimed figure in his field or state that he was selected for the interview based on acclaim or recognition.

The three newly submitted articles identify the Petitioner as a source of information and opinions in his area of expertise, but the Petitioner has not shown that these articles demonstrate national or international acclaim or recognition at the top of his field.

Discussed separately from the above articles, the Petitioner submits two articles relating to [redacted] provision of legal services in [redacted] and elsewhere in China. One of the articles quotes the Petitioner at some length in his capacity as the senior international advisor for the firm in China; the other article mentions him more briefly regarding the establishment of the firm in [redacted]

The Petitioner also submits a press release from [redacted] own website, indicating that the Petitioner "was invited to speak on a private wealth panel" at a government-organized event in May 2021. The Petitioner does not establish that this event attracted media attention outside [redacted] own promotional materials. Also, the event occurred two years after the petition's May 2019 filing date and therefore could not establish eligibility as of the filing date, even if the Petitioner had submitted evidence of the significance of the event. This invitation is one of several pieces of evidence that deals with the Petitioner's high-ranking position at [redacted] This high rank satisfies the threshold criterion at 8 C.F.R. § 204.5(h)(3)(viii), as a leading role for an organization that has a distinguished reputation. But the Petitioner has not shown that this high rank has translated to individual recognition and acclaim for himself.[3]

In addition to articles *mentioning* the Petitioner, the record also contains articles written *by* the Petitioner. In our decision dismissing the Petitioner's appeal, we acknowledged the Petitioner's authorship of scholarly articles, but determined that the Petitioner had not shown that the articles "set him apart from his co-authors and others" in the field who also publish scholarly articles. We also observed that the Petitioner had not established the "influence or reach" of the publications that carried the articles. We concluded, as a result, that "the Petitioner's published work does not rise to [the] level" of "extensive documentation of recognition in [his] field."

[3] The distinction is of particular significance because the Petitioner does not intend to work directly for [redacted] in the United States. Rather, he stated that he intends "to set up a boutique tax consulting firm" for certain clients with business interests in the United States and China, and "may continue to be associated with [redacted] in a consulting relationship."

On motion, the Petitioner submits evidence to establish that some of the publications that have carried his articles have significant circulation and readership. These materials, however, do not address the larger question how the articles "set [the Petitioner] apart from his co-authors and others" who have published such articles in the field.

We note that circulation figures factor into initial consideration of scholarly articles as a threshold criterion at 8 C.F.R. § 204.5(h)(3)(vi). *See* 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual. In our prior decision, we agreed with the Director that the Petitioner had satisfied that criterion. But evidence that satisfies the initial threshold criteria does not necessarily show sustained national or international acclaim. The Petitioner has not shown that the publishers invited him to write articles based on such acclaim, or that he derived acclaim from the reception of the articles upon their publication.

The Petitioner addresses another threshold criterion that we had already granted, concerning high salary or other significantly high remuneration under 8 C.F.R. § 204.5(h)(3)(ix). The Petitioner submits a statement from [redacted] and background evidence indicating that he earned a high salary from 2013 to 2020, whereas his earlier evidence covered a shorter span from 2018 to 2019. As with the circulation figures above, the new evidence is relevant to the proceeding, but it does not suffice to shift the overall calculus of the final merits determination in the Petitioner's favor and demonstrate sustained national or international acclaim. The Petitioner's new evidence submitted does not consistently show a level of recognition outside of [redacted] that reaches the level of sustained national and international acclaim.

Because the newly submitted evidence does not establish eligibility, we will dismiss the motion to reopen.

B. Motion to Reconsider

A motion to reconsider must establish that the prior decision was based on an incorrect application of law or policy, and was incorrect based on the record at the time of that decision. 8 C.F.R. § 103.5(a)(3). In the present motion, the Petitioner identifies only one claimed error.

In our dismissal notice, we noted the Petitioner's "long-time service with the Young Men's Christian Association of [redacted] in several roles, most recently as its Chairman of the Board and President," but we observed that "the Petitioner does not suggest or establish that this work has brought him acclaim in the international tax community, or that any recognition for this work extends beyond the [redacted]." On motion, the Petitioner states that "requiring Petitioner's leading role to extend beyond the [redacted] is overreach, and thus, and incorrect application of law." The Petitioner states that the criterion at 8 C.F.R. § 204.5(h)(3)(viii) "only requires evidence that Petitioner has performed a leading role in an organization with a distinguished reputation, and nothing more. It is not an oversight that 'in the field' is not written into this criterion when all 9 other criteria contain a 'field' limitation." The Petitioner therefore asserts that we "impose[d an] additional evidentiary requirement" that the leading role relate to the Petitioner's field.

We emphasize that, in the denial notice, the Director cited the Petitioner's position at [redacted] and granted that the Petitioner had met the requirements of 8 C.F.R. § 204.5(h)(3)(viii), and we agreed in our dismissal notice. Therefore, we imposed no additional evidentiary requirement within the context of that regulatory criterion.

But the final merits determination is not an aggregation of the threshold regulatory criteria at 8 C.F.R. § 204.5(h)(3). Rather, as explained above, a final merits determination rests on consideration of the record as a whole. In the context of a final merits determination, we can consider factors outside the confines of the ten threshold criteria. *See Kazarian*, 596 F.3d at 1151, which recognizes that issues that "are not relevant to the antecedent procedural question" of the threshold criteria "might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor." When considering whether the Petitioner is at the very top *of his field of endeavor*, as required by 8 C.F.R. § 204.5(h)(2), we cannot properly determine the weight to attribute to the Petitioner's activities outside that field when the Petitioner has not established their relevance.

In our dismissal notice, we concluded that the Petitioner had not shown that his leading role at [redacted] "has brought him acclaim in the international tax community." The Petitioner, on motion, has not overcome or even disputed this conclusion. The burden is on the Petitioner to establish eligibility for the benefit he seeks, and to establish the relevance of the evidence submitted. The Petitioner has not explained how a leadership position at [redacted] relates to sustained national or international acclaim in the field of tax accounting.

The Petitioner has not identified any error of law or policy in our appellate decision, or established that the appellate decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and we must dismiss the motion.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. We will therefore dismiss the motion to reopen and motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.