U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10875587

Date: OCT. 5, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a clinical chemist, seeks classification as an alien 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 the record did not establish that the Petitioner met the initial evidence requirements of this classification by demonstrating her receipt of a major, internationally recognized award or meeting at least three of the evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3). The Petitioner then appealed the matter, asserting that she met two of the evidentiary criteria in addition to the two that the Director found she met. We dismissed the appeal, finding that the evidence was not sufficient to show that she met either of the additional criteria.

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

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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the 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 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 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).

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.

II. ANALYSIS

The Director determined that the Petitioner met two of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3); those relating to her authorship of scholarly articles, and her participation as a judge of the work of others in her field. On appeal, the Petitioner asserted that she also met two additional criteria, relating to her membership in associations requiring outstanding achievements of their members, and to her original contributions of major significance to her field. In our previous decision, we agreed with the Director that she did not meet those two additional criteria. On motion, the Petitioner submits new evidence in support of both criteria, and asserts that our decision regarding her membership in at least one of the professional associations was incorrect based upon the evidence of record at the time.

> *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)

The Petitioner had previously submitted evidence of her membership in several professional associations in her field. However, we determined that the membership requirements of these associations, which mainly consists of educational and experience thresholds, did not rise to the level of outstanding achievements. On motion, the Petitioner provides new evidence which she asserts shows that her Ph.D. degree in clinical and bioanalytical chemistry and her post-doctoral training in the same field qualify as outstanding achievements. Regarding her degree, she provides evidence from the website of the Commission for Accreditation in Clinical Chemistry (ComACC) showing that the doctoral program at [redacted] University [redacted] accredited by the ComACC. She also provides a journal article published in 2007 which states that the American Board of Clinical Chemistry (ABCC) allows for certification for those for those clinical chemists who received their Ph.D. from an accredited program, whereas those who received their degrees from non-accredited programs must also have five years of practical experience in order to qualify for certification.

Although the Petitioner does not articulate how these facts show that obtaining her degree is an outstanding achievement, she appears to be relying upon the small number of clinical chemists who have graduated from a ComACC accredited program, noting that only 36 students have completed the program at [redacted] in the past 10 years. However, the fact that only one university in North America has chosen to attain an accreditation for its program tailored to clinical chemistry scientists does not prove that those who complete such a program have made an outstanding achievement. The Petitioner has not established that the clinical and bioanalytical chemistry program at [redacted] is highly competitive or rigorous in comparison to similar programs at other universities in a way which would make holders of [redacted] Ph.D.s stand out from their peers. Further, the 2007 article describes earning a Ph.D. as part of "the training pathway" for clinical chemistry scientists, meaning that obtaining any such degree is

fulfilling a minimum requirement for employment in the career that puts the recipient on an equal footing with his or her peers.

The Petitioner makes a similar assertion about the post-doctoral training she completed at the [redacted] College of Medicine and [redacted] Children's Hospital, noting that the program is 1 of 35 accredited by ComACC. By comparing this number with the total number of bachelor's, master's and doctorate degrees awarded in the field of biochemistry, the Petitioner concludes that "It is very clear that I am in the Top 1% of my field due to my Ph.D. degree & post doctoral training…" While it is clear that the Petitioner is better qualified to pursue a career as a clinical chemist than those who have not yet completed their education and training, she has not shown that the completion of that training is an achievement that stands out from those of her peers.

In addition, the Petitioner asserts that her membership in the American Society of Hematology (ASH) is qualifying, and refers to a letter from ASH which states that in addition to a doctoral degree or equivalent, a member must "demonstrate a continuous interest in any discipline important to hematology, as evidenced by work in the field, original contributions, and attendance at meetings concerning hematology." The Petitioner notes that her two articles published in ASH journals can be considered to be "original contributions," but does not explain how the publication of these two papers is an outstanding achievement. While we agree that papers published in scientific journals should present original research findings or data that make some contribution to the pool of knowledge in a particular field, the letter indicates that this is one of three ways in which members must "demonstrate a continuous interest in any discipline important to hematology." The Petitioner has not shown that demonstrating interest in a field by contributing to it rises to the level of an outstanding achievement in that field.

For the reasons stated above, the new evidence submitted on motion does not establish that the Petitioner meets this criterion, nor has she shown that our previous decision was based upon an incorrect application of law or policy.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In our previous decision, we found that the evidence regarding the Petitioner's work on the [redacted] in clinical tests was insufficient to show that it had been widely implemented or otherwise impacted the field of clinical chemistry. We specifically noted that a reference letter from the director of clinical testing at the [redacted] did not indicate that that institution had implemented the Petitioner's work, and that the extent of the impact of her work was not apparent. On motion, the Petitioner submits additional evidence which she asserts shows how her research helped to form guidelines relating to [redacted] that were adopted at the [redacted] and other health care organizations.

Specifically, the Petitioner resubmits a copy of a paper she authored regarding [redacted] which was published in *Annals of Clinical & Laboratory Science*, as well as two papers which make reference to that paper. The first, titled '[redacted] was published in *Clinical Biochemistry* in 2019. It cites to the Petitioner's paper once, along with a group of seven other papers, in stating that investigations have shown [redacted]

[redacted] in several types of assays. The Petitioner asserts that the fact that one of the authors of this paper is from the [redacted] and others are from several different healthcare facilities across the United States, supports the statement in the letter noted above indicating implementation of her work at "many hospitals." Specifically, she asserts that "best practices are only generated when the respective healthcare organizations are adhering to those best practices." While we accept the argument that those recommending best practices are most likely either already following those practices or intend to (assuming the recommender has the authority to implement the recommended practices), this evidence does not overcome our previous finding that the extent of the Petitioner's contribution to these recommended best practices has not been established. The paper indicates that hers was one of several papers which confirmed the [redacted] issue, and does not show that the significance of this contribution towards development of the recommended best practices.

Similarly, the Petitioner also submits on motion a copy of guidelines developed by the American Association of Clinical Chemists (AACC), which she indicates "were generated by contributions on a global level." Like the *Clinical Biochemistry* paper, this document also references the Petitioner's paper on one occasion, noting that it was one of three studies which reported [redacted] for in vitro studies of [redacted] immunoassays on equipment from a particular manufacturer. Other studies and case reports are also summarized in this document, and it indicates that the United States Food and Drug Administration issued guidelines regarding [redacted] in 2017, which "echoed those issued previously from manufacturers…" While this evidence shows that the Petitioner's work contributed to the knowledge on this issue, it does not establish that her contribution was of major significance, as her work and resulting paper was one of several others which added knowledge on this issue and led others to develop best practices and guidance.

Accordingly, after review of the new evidence submitted on motion, we find that it does not establish that the Petitioner meets this criterion.

III. CONCLUSION

The Petitioner 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 of proceedings at the time of the decision. In addition, after review of the new evidence submitted with her motion to reopen, we find that the Petitioner has not established that she meets the individual criteria claimed or that she is otherwise eligible for the requested benefit.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.