U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19920861

Date: MAY 26, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, an information technology (IT) project manager, 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 Nebraska Service Center approved the petition, but later revoked that approval on notice, under the provisions of section 205 of the Act, 8 U.S.C. § 1155, and 8 C.F.R. § 205.2. The Director concluded that the petition had been approved in error because the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision, and a subsequent combined motion to reopen and reconsider. The matter is now before us on a motion to reopen.

The burden of proof to establish eligibility for the benefit sought remains with the petitioner in revocation proceedings. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); and *Matter of Estime*, 19 I&N Dec. 450, 452, n.1 (BIA 1987). Upon review, we will dismiss the motion.

I. LAW

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Section 205 of the Act, 8 U.S.C. § 1155. By regulation this revocation authority is delegated to any U.S. Citizenship and Immigration Services (USCIS) officer who is authorized to approve an immigrant visa petition. *See* 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto, before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b) and (c). The Board of Immigration Appeals has discussed revocations on notice as follows:

> [A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the

> petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)). By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 589.

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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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.

III. ANALYSIS

The Petitioner, originally from Nigeria, is a Canadian citizen. He received his Doctor of Computer Science from [redacted] University in 2016. At the time he filed the petition in 2016, he worked as an IT manager for [redacted] Subsequent letters indicated that the Petitioner began working as a lead business systems analyst for [redacted] in 2019, and as manager of IT Systems and Administration for [redacted] beginning in 2021.

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 five of these criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (ix), High remuneration for services.

The Director approved the petition in December 2016, but revoked the approval in December 2019 based on the conclusion that the Petitioner met only one of the criteria, relating to memberships. We dismissed the Petitioner's appeal from the Director's decision in October 2020. In that decision, we discussed the five claimed evidentiary criteria in depth, and concluded that the Petitioner had satisfied two of the initial evidentiary criteria, relating to judging the work of others and publication of scholarly articles.

We dismissed the Petitioner's subsequent combined motion to reopen and reconsider in July 2021, concluding that the Petitioner did not accurately describe the grounds for revocation or fully address the grounds for dismissal of the appeal. We also discussed, in further detail, the criteria pertaining to memberships and high remuneration, and concluded that the Petitioner's new evidence did not show that he had satisfied those criteria.

In his second motion, the Petitioner submits more evidence pertaining to memberships and remuneration. For the reasons discussed below, this new evidence does not establish proper cause for reopening the proceeding.

> *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).

Throughout this proceeding, the Petitioner has maintained that his status as a senior member of the Institute of Electrical and Electronics Engineers (IEEE) meets the requirements of the criterion.[1] The

[1] The Petitioner is also a member of the Association for Computer Machinery, but his latest motion includes evidence only regarding his IEEE membership.

Director agreed, but we withdrew and reversed that determination in our appellate decision, finding that the requirements for senior membership do not include outstanding achievements, and that the Petitioner had not shown that recognized national or international experts judge the achievements of candidates for senior membership.

In our decision on the Petitioner's first motion, we concluded that the Petitioner's additional evidence showed that senior membership is more restrictive than lower membership categories, but the Petitioner had not shown that the requirements for senior membership rose to the level of outstanding achievements as judged by recognized national or international experts.

Now, on his second motion, the Petitioner states:

> The election to senior member status of IEEE is conducted by the Admission and Advancement (A&A) Senior Member Review Panel . . . [with members] recruited among Senior members, Life Senior members, and Fellows of the section where the meeting is to be held. The panel members are experts in their chosen fields.

The new evidence submitted with the second motion does not establish that panel members are nationally or internationally recognized experts in their fields, as the regulation requires. As we noted in a prior decision, an IEEE official previously indicated that panel members are typically chosen "from the local IEEE Section." This information, directly from the IEEE, did not indicate that panel service was limited to nationally or internationally recognized experts.

On motion, the Petitioner submits a copy of the *IEEE Fellow Committee Recommendation Guide: How to Write an Effective Nomination.* The Petitioner observes: "The IEEE Bylaws define the qualifications for elevation to Fellow Grade in terms of unusual distinction in the profession, an outstanding record of accomplishments . . . bringing the realization of significant value to society." As we previously observed in our appellate decision, "the requirements to become a Fellow appear to be align much more closely with the regulatory language than the requirements for the Senior Member grade."

The Petitioner asserts: "The only important requirement during nomination [for elevation to fellow grade] is that the nominee must be a Senior member of IEEE. This is because you must have met and passed through the rigorous screening process before you can become a Senior member of the association." The second quoted sentence is speculative and unsupported. While senior members are more experienced and accomplished than the overall IEEE membership, the Petitioner has not established that applicants for senior member grade are subjected to a "rigorous screening process," or that senior membership is "[t]he only important requirement" for elevation to fellow grade.

Furthermore, the Petitioner asserts that "only 9% of IEEE['s] 428,000 members have achieved the status of Senior Member in the organization." Nine percent of 428,000 is 38,520, which is a substantial number. The Petitioner has not shown that IEEE has empaneled nationally or internationally recognized experts in order to individually judge the achievements of thousands of applicants for senior membership, which includes nearly 40,000 applicants whose applications were approved and an unspecified additional number of unsuccessful applicants. Printouts from IEEE's website show that IEEE has a dedicated Fellow Committee, which makes recommendation to the IEEE Board of Directors – literally the highest level of the organization. In contrast, as noted above, senior members are chosen at the local chapter

level, a delegation that is fully consistent with the very high number of senior members. Also, the same printouts indicate that "[a]ccording to IEEE Bylaw I-305.5, the total number of Fellow recommendations in any one year must not exceed one-tenth of one percent of the voting membership."

While the Petitioner's motion establishes that IEEE has published a 27-page guide for individuals wishing to nominate an IEEE member for elevation to fellow grade, he does not submit similar documentation relating to senior member grade to establish that his membership would qualify under 8 C.F.R. § 204.5(h)(3)(ii).

IEEE's requirements for elevation to fellow grade clearly state that nominees must "[h]ave accomplishments that have contributed importantly to the advancement or application of engineering, science and technology, bringing the realization of significant value to society." The Petitioner has not shown that the requirements for senior member status approach that level of achievement. Instead, those requirements include productivity and length of experience. The Petitioner has not established that his level of IEEE membership clears the very high threshold established in the language of the regulation.

The newly submitted *Recommendation Guide* does not establish proper cause for reopening the proceeding.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

In the denial notice, the Director noted that the Petitioner earned $115,000 per year, and submitted "wage statistics that indicate that those at the top of the field command at least $129,700." Some of the wage information came from O-NET, a database operated by the Bureau of Labor Statistics of the U.S. Department of Labor (DOL). In our initial appellate decision, we concluded that the submitted evidence was too broad to show that the Petitioner has commanded a high salary in relation to others in his field. Some of the evidence failed to account for local variations, and others included lower-paying occupations under broad umbrella terms. In our first motion decision, we concluded that the Petitioner's submitted figures were not applicable for various reasons.

In his second motion, the Petitioner submits printouts from O-NET and another DOL-sponsored website, CareerOneStop. The printouts from both sites indicate that the salary data is for "Computer Occupations, All Other," because specific data for IT project managers are unavailable. This evidence is of questionable relevance because, as we explained in a previous decision, the general heading of "Computer Occupations, All Other" encompasses what O-NET acknowledged as "occupations with a wide range of characteristics." Most of the included occupations are non-managerial. Therefore, average or median figures for this diverse grouping would likely tend to be lower than for the Petitioner's specific occupation. Furthermore, the Petitioner seeks to compare the median salary for this broad range of computer workers not to his base salary, but to his total projected compensation which included the possibility, but not the guarantee, of a 10% bonus.

In our prior decisions, we explained why the submitted salary information is of limited applicability. The Petitioner's newly submitted documentation is subject to these same limitations, and therefore does not show proper cause for reopening the proceeding.

We note that, if the Petitioner had cleared the initial evidentiary threshold, the case would have proceeded to a final merits determination, in which the Petitioner would have had to establish sustained national or international acclaim. In the context of *sustained* acclaim, it would have been relevant to note that the Petitioner changed jobs a number of times in the years immediately surrounding the filing of the petition, and that he provided salary or remuneration evidence for only some of his jobs during that time. With incomplete evidence, we would not be able to conclude that his compensation reflected sustained national or international acclaim.[2]

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

ORDER: The motion to reopen is dismissed.

[2] The evidence of his salary with [redacted] which formed the basis for most of his salary claims, consists of a job offer letter rather than any evidence of payments he actually received. Therefore, the Petitioner has not established that he actually received the contingent 10% bonus described in the job offer letter.