U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF E-E-

DATE: JUNE 7, 2016

MOTION ON AAO DECISION

PETITION: FORM I-140 IMMIGRANT PETITIONER FOR ALIEN WORKER

The Petitioner, who works in the field of "creativity as it relates to public policy," seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) § 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, Nebraska Service Center, denied the petition. The Petitioner appealed the denial to this office and we dismissed the appeal. He then filed a motion to reconsider, which we denied. The matter is now before us on a second motion to reconsider. The motion will be denied.

A motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider. 8 C.F.R. § 103.5(a)(1)(i). For a decision received by mail, we allow 33 days. *See* 8 C.F.R. § 103.8(b). We denied the Petitioner's first motion to reconsider on September 11, 2015. The Petitioner submitted this second motion on November 9, 2015, 59 days after our previous decision's issuance. The motion is therefore denied as untimely.[1]

In addition to its untimeliness, the instant motion does not otherwise meet the requirements of a motion to reconsider. A motion to reconsider contests the correctness of the original decision based on the previous factual record. 8 C.F.R. § 103.5(a)(3). The motion must demonstrate that the prior decision was incorrect based on the evidence of record at the time. *Id.* It must state the reasons for reconsideration and cite any pertinent precedent to establish that the original decision was based on an incorrect application of law or policy. *Id.* On motion, we consider only arguments and evidence relating to the grounds underlying the most recent decision. In the instant filing, the Petitioner does not state that he met the requirements of a motion reconsider in his last filing, but instead presents arguments relating to underlying eligibility issues discussed in our dismissal of the appeal.

[1] The Petitioner's first attempt to file the instant motion was rejected due to improper fees. We note, however, that he submitted this first attempt on October 16, 2015, or 35 days after the previous decision, rendering it similarly untimely.

Nevertheless, we do not find that the underlying determination regarding the Petitioner's eligibility was made in error. The Petitioner first states that his prior O-1 nonimmigrant visas should be considered *prima facie* evidence of his extraordinary ability. He reasons that, "[w]hile there is nothing requiring USCIS [U.S. Citizenship and Immigration Services] to approve petitioner because of a prior approval, [th]ere is a strong precedent to remain consistent with the application of law and fact." The Petitioner does not cite to case law, regulations, or other guidance to support his statement. In contrast, we have previously provided citation to three examples of instances in which Forms I-140 immigrant petitions were found to be properly denied after prior approval of nonimmigrant petitions: *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. United States Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

The Petitioner states that we ignored his prior O-1 approval. In fact, our dismissal of his appeal contains a section entitled "O-1 Nonimmigrant Visa." He alleges that we "simply determined the O visa was in error, and gave absolutely zero supporting justification for that holding." In actuality, we made no finding regarding the accuracy of any previous visa approvals, but instead stated that any prior approval was not relevant to the current adjudication. The Petitioner indicates that our position "creates an impossibly chaotic system where decisions of USCIS are randomly overturned, without any express reason." However, none of the decisions relating to the underlying petition has affected any prior visa approvals. As for the reasoning behind the decisions issued, the Petitioner received a decision from the Director on the initial petition, a decision from us on the appeal, and a decision from us on the first motion to reconsider. Each of these provides an explanation of the rationale for the findings made.

The Petitioner correctly states that consistency in adjudication is a policy consideration. We believe, however, that a decision based on a thorough review of the evidence is the best way to serve that interest. We decline to substitute an earlier decision for an evaluation and analysis of the merits of the instant petition. In the same way, we would not prejudice a future petition filed by the Petitioner because of this petition's denial. As we noted in our dismissal, we are not required to approve applications or petitions where eligibility has not been demonstrated. *See Church of Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988).

In his second challenge on motion, the Petitioner states that we did not properly consider the evidence provided regarding the evidentiary criterion requiring original scientific, scholarly, artistic, athletic or business-related contributions of major significance in the field located at 8 C.F.R. § 204.5(h)(3)(v). The Petitioner references a letter from the [redacted] dated November 18, 2005, which reads: "Thus, in complimenting, locally, your global efforts in the field of Creativity and Innovations, your activities has [*sic*] been incorporated in Article 5, Section 1 (ii) Page 3, of our enabling constitution approved by the [redacted] The Petitioner urges that a change to this organization's constitution was based on his work, and that this has affected over 36,000 youths. However, neither the letter nor other evidence in the record contains further explanation that corroborates the Petitioner's statements regarding the meaning of this letter, his work's impact, or his contributions in the field at large.

The Petitioner similarly contends that other letters of support were not given proper weight in an assessment of his impact on the field. He notes, for example, that we did not address the following statement regarding his book: "It is a remarkable piece, for which you are to be commended highly and encouraged greatly." We acknowledge this praise of the Petitioner's work. The criterion requires, however, evidence of the Petitioner's contributions of major significance in the field. While the cited letter indicates that the Petitioner's book has garnered the respect of those in the field, it does not show how it has had an impact. As a result, we do not find an error was made in previous determinations regarding this criterion.

Finally, we note that, even if we made all findings urged by the Petitioner, he would satisfy only two of the initial evidentiary criteria, when at least three are required. 8 C.F.R. § 204.5(h)(3). As a result, the Petitioner does not allege errors that would affect his eligibility for the benefit sought.

The motion will be denied for the above stated reasons, with each considered an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of E-E-*, ID# 16650 (AAO June 7, 2016)