(b)(6)

U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-O-R-D-L-

DATE: MAY 27, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a former professor at the [redacted] seeks classification as an individual "of extraordinary ability" in education. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification makes visas available to foreign nationals 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, Texas Service Center, denied the petition and dismissed two subsequent motions. The Petitioner appealed the matter to us. We dismissed the Petitioner's appeal, and reaffirmed that decision in three motion adjudications. The matter is now before us on a fourth motion to reconsider. We will deny the motion.

I. MOTION TO RECONSIDER

In support of his motion to reconsider, the Petitioner submits a copy of our latest decision dated November 6, 2015; a copy of a redacted January 28, 2015, Administrative Appeals Office (AAO) non-precedent decision for a competitive runner seeking classification as an individual "of extraordinary ability" in athletics; a November 23, 2015, email from U.S. Citizenship and Immigration Services (USCIS) to the Petitioner explaining the need for a Freedom of Information Act request and consent from the subject of record to obtain an un-redacted version of the aforementioned non-precedent decision; and a June 24, 2015, email from USCIS responding to a [redacted] inquiry from [redacted]

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions or legal citations to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also 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). In addition, a motion to reconsider cannot be used to raise a legal argument that could have been raised earlier in the proceedings. *See Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991).

On motion, the Petitioner argues that we applied an incorrect standard of proof in our prior decisions. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant has satisfied the standard of proof. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

The Petitioner's citation of cases referring to the standard of proof in immigration proceedings does not alone demonstrate that our previous decision was based on an incorrect application of law or policy. *See* 8 C.F.R § 103.5(a)(3). In each of our previous decisions, we explained at length why the Petitioner had not shown that it is more likely than not that he qualifies for the classification sought. The Petitioner does not indicate how our analysis involved the application of a higher standard of proof. Upon review, we find that we appropriately analyzed each piece of evidence, and, when concluding that it did not meet a given criterion, provided an explanation. The Petitioner does not explain how the guidance in *E-M-* or *Chawathe* demonstrates that any of our findings applied an incorrect standard of proof. Accordingly, the Petitioner's reliance on the very general language in those two precedent decisions does not identify an issue that would support a grant of the instant motion.

The Petitioner also cites to *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014) and argues that the "AAO can't ignore the 'comparable grounds' of [our] published decision of January 28, 2015." *Abdelghany* identifies the circumstances under which a lawful permanent resident who has accrued 7 consecutive years of lawful unrelinquished domicile in the United States and who is removable or deportable by virtue of a plea or conviction entered before April 24, 1996, and between April 24, 1996, and April 1, 1997, is not eligible for discretionary relief under former section 212(c) of the Act. The *Abdelghany* decision does not provide any pertinent guidance for those seeking immigrant visa classification as individuals of extraordinary ability under section 203(b)(1)(A) of the Act. Further, there is no finding in *Abdelghany* compelling us to consider the "comparable grounds" of a non-precedent decision.

The January 28, 2015, AAO decision identified by the Petitioner is a non-precedent decision. While the regulation at 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Non-precedent decisions are only binding on the parties to those cases, and they do not create or modify USCIS policy or practice with respect to any other cases. *See* USCIS Policy Memorandum PM-602-0086.1, *Precedent and Non-Precedent Decisions of the Administrative Appeals Office (AAO)*, November 18, 2013.

While the Petitioner contends that the aforementioned policy memorandum indicates USCIS may consider a non-precedent decision for instructional value, the January 28, 2015, decision involved a competitive athlete in track and field events. The Petitioner has not shown that the field in which he claims extraordinary ability, education, is sufficiently analogous to the field of expertise discussed in the non-precedent case. The Petitioner offers a criterion to criterion comparison between the two

cases, in which he lists the quantity of the athlete's accomplishments and argues that his evidence demonstrated a higher level of expertise and acclaim. The Petitioner maintains that his petition should be similarly approved because he provided more evidence than the competitive runner whose appeal we sustained. For example, the Petitioner states multiple times that the competitive runner had just for and place. The Petitioner's statement, however, is incorrect and does not represent the athlete's complete record of achievement in track and field competitions.

Although the letter from the athlete's college coach specifically mentioned her and place awards at major international competitions, her coach also stated that she "medaled multiple times in [her country] during her career as a Furthermore, our January 28, 2015, decision indicated that the athlete "submitted medals and event results demonstrating that she received nationally and internationally recognized awards as a competitive runner."

The regulation at 8 C.F.R. § 103.5(a)(3) requires the Petitioner to support his motion to reconsider with "any pertinent precedent decisions." The Petitioner's submission of the non-precedent decision for an Olympic athlete whose appeal we sustained and the Petitioner's accompanying arguments do not establish that we erred in adjudicating his previous motion. As we discussed in *Matter of Chawathe*, 25 I&N Dec. at 376, "truth is to be determined not by the quantity of evidence alone but by its quality," and we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." Thus, at issue is the quality of the Petitioner's accomplishments rather than a comparison of the number of exhibits with an approvable petition. The Petitioner has also not provided sufficient legal authority explaining how an approved petition involving an athlete demonstrates that his petition should similarly be approved.

In addition, the Petitioner "asks for a *de novo* review of the petition" and that we consider "all aspects" of the petition and "examine anew" the documentation of record to "re-determine the decision in whole and approve" the petition. As explained in our previous decisions, we conducted a complete review of the petition and the evidence presented during our analysis of the Petitioner's appeal, and we decline to do another *de novo* review at this time.

On motion, the Petitioner maintains that he meets the criteria under 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v), and (viii), but does not explain how our latest findings on those issues were incorrect. Other than noting that his petition should be approved because we approved an athlete's petition in a January 28, 2015, non-precedent decision, the Petitioner has not identified any error in our November 6, 2015, decision, pertaining to the criteria under the regulation at 8 C.F.R. § 204.5(h)(3). A motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). As we have previously reviewed all relevant filings in the record and concluded that the Petitioner did not establish his eligibility for the petition, we will not again review the evidence in absence of a showing that our previous decision was made in error. The Petitioner has not demonstrated that we should grant his current motion to reconsider as he has not cited to a legal authority or policy showing that we erred in our November 6, 2015 decision.

Lastly, the Petitioner requests oral argument to personally explain the issues of his case. The regulation at 8 C.F.R. § 103.3(b) allows for oral argument in support of an appeal, but there is no provision in the regulations permitting oral argument on motion. *See* 8 C.F.R. § 103.5(a). Furthermore, the requesting party must adequately explain in writing why oral argument is necessary and the Petitioner has not done so in this instance. USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In the present matter, the Petitioner has identified no unique factors or issues of law to be resolved that cannot be adequately addressed in writing. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the Petitioner's request for oral argument is denied.

II. CONCLUSION

As the motion to reconsider is not supported by any pertinent precedent decisions or legal citations that demonstrate our latest decision was based on an incorrect application of law or USCIS policy, the motion is denied. 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, the Petitioner has not met that burden. Accordingly, the motion will be denied.

ORDER: The motion to reconsider is denied.

Cite as *Matter of A-O-R-D-L-*, ID# 16610 (AAO May 27, 2016)