MATTER OF L-D-R-G-C-

DATE: JAN. 30, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a jewelry designer, seeks classification as an individual of extraordinary ability in the arts. 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, Texas Service Center, denied the petition, concluding that the Petitioner had satisfied only one of the initial evidentiary criteria, of which she must meet at least three. We dismissed the Petitioner's subsequent appeal, also finding that she had met only one of the evidentiary criteria. The matter is now before us on a motion to reconsider. Upon review, we will deny the motion.

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). 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 submits qualifying evidence under at least three criteria, we will then determine whether the totality of 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.[1]

[1] *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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "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").

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3).

II. ANALYSIS

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires that the motion must be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." Furthermore, the regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." In this case, the Petitioner did not submit a statement indicating whether the validity of the decision has been, or is, subject of any judicial proceeding.

In addition, the Petitioner requests that she be allowed an opportunity to present an oral argument "because this matter presents an issue of particular significance regarding the types of evidence that should be considered when applying 8 C.F.R. § 204.5(h)(3) to determine eligibility." 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). Further, the requesting party must explain in writing why oral argument is necessary. Here, the Petitioner has not identified any unique factors or issues of law to be resolved that cannot be adequately addressed in writing. We find the written record of proceedings fully represents the facts and issues in this matter. We have sole authority to grant or deny a request for oral argument. *See* 8 C.F.R. § 103.3(b). For these reasons, we will not grant the Petitioner's request for oral argument.

The Petitioner indicates that she "hopes within 30 days of this submission to have been able to acquire additional" documentation. As of the date of this decision, the Petitioner has not submitted any additional evidence, and the record of proceedings is considered complete. Regardless, the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of a previously-filed motion.

Moreover, 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.* As discussed below, the Petitioner makes the same arguments on motion as she did on appeal and does not show that our prior decision was based on an improper application of law or policy.

On motion, the Petitioner contends that we erred in finding that she did not meet the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material criterion under 8 C.F.R. § 204.5(h)(3)(ii), and the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v). Specifically, the Petitioner states that we did not consider "comparable types [of] evidence which demonstrate extraordinary ability in the field of jewelry design, and the testimony from successful and prominent businessmen . . . ."

The regulation at 8 C.F.R. § 204.5(h)(4) provides that "[i]f the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." General assertions that the criteria described in 8 CFR 204.5(h)(3) do not readily apply to an occupation are not probative. A petitioner should demonstrate why the criteria at 8 CFR 204.5(h)(3) do not readily apply and how the evidence submitted is "comparable" to the specific objective evidence required under the relevant provisions.

In our evaluation of the awards criterion, we determined that the Petitioner did not establish that her "Recognition Award" from , a non-profit charitable organization in Florida, is a nationally or internationally recognized award for excellence in the field. In addition, although the Petitioner requested other evidence to be considered as comparable evidence under this regulatory criterion, we found that she did not demonstrate that the awards criterion did not readily apply to her occupation, and did not show that her documentation was comparable to the awards criterion under 8 C.F.R. § 204.5(h)(3)(i). Specifically, the Petitioner maintained her evidence should be found comparable based, in part, on her jewelry's selection to be worn on air by television hosts and on the commissions she has received to design custom pieces for celebrities and renowned boutiques.

On motion, the Petitioner contends that she should be permitted to demonstrate extraordinary ability through her adornment of celebrities, successful businessmen, and politicians and she submits several letters, such as from actress; , in the People's Republic of China; and television anchor for and Although they attest to wearing her jewelry, the Petitioner does not offer evidence on motion establishing the inapplicability of the awards criterion to her occupation as a jewelry designer. Moreover, the Petitioner has not shown how the acts of other individuals wearing her jewelry is comparable to receiving nationally or internationally recognized awards or prizes for excellence in the field.

Regarding the published material criterion, we analyzed the Petitioner's documentary evidence and found that her submission of photographs of public figures and celebrities wearing her jewelry did not meet the plain language of this criterion requiring "published material about the alien" including "the title, date, and author of the material." Further, we determined that even if we considered the photographs as comparable evidence to this criterion, the Petitioner did not show that published material does not readily apply to jewelry designers or how photographs of other individuals with her jewelry compare to published material about her in professional or major trade publications or other major media.

The Petitioner states on motion that she is unable to include the date and author of the material because they are too difficult to locate, and we should consider the totality of the publications when determining whether the published material criterion has been met. In addition, the Petitioner claims that "the adornment in addition to the publication in magazines with wide print and online circulation should be recognized as comparable evidence satisfying the publication in major media criterion." Further, the Petitioner submits a letter from director of magazine, who indicates that the Petitioner placed her jewelry at the disposal of the magazine from 2001 to 2005.

As discussed in our previous decision, photographs of individuals wearing her jewelry do not meet this criterion as they do not represent published material about the Petitioner relating to her work, including the title and author of the material, consistent with the plain language of this regulatory criterion. Moreover, the Petitioner did not offer evidence establishing that the published material criterion does not readily apply to her occupation as a jewelry designer or that the submitted photographs are comparable to published material about her.

In our analysis of the original contributions criterion, we evaluated the Petitioner's reference letters, including letters of varying probative value, and found that they did not demonstrate her original contributions of major significance in the field. On motion, the Petitioner generally objects to our findings without supporting the record or showing how her contributions are of major significance. For instance, the Petitioner states that she is in "potential contractual relationships with . . . luxury chain stores." A petitioner cannot establish eligibility under this criterion based on the expectation of future significance. Eligibility must be demonstrated at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The Petitioner did not show that her previous contractual relationships impacted or influenced the field in a significant manner.

On motion, the Petitioner provides additional recommendation letters praising her talent as a jewelry designer. The letters, however, do not indicate that she has made original contributions of major significance in the field consistent with the plain language of the regulatory criterion. As indicated in our previous decision, the submission of letters complimenting the Petitioner's jewelry without showing its impact or influence on the field in a significant manner is insufficient to meet this criterion. The Petitioner has not established that she has made original contributions of major significance in the field.

The record of proceedings reflects that, in our prior decision, we thoroughly analyzed the Petitioner's documentation and articulated the reasons why her evidence, including comparable evidence, did not satisfy the evidentiary criteria. In the instant motion, the Petitioner does not demonstrate that our prior decision was incorrect based on the record at the time, nor does she show that we improperly applied any law, regulation, or precedent. Again, in filing a motion to reconsider, a petitioner must show that we erred by incorrectly applying law or policy and be supported by pertinent legal materials rather than a request to reevaluate documentation or make the

same arguments. Because the Petitioner did not satisfy the filing requirements, we will deny the motion to reconsider.

III. CONCLUSION

The Petitioner has not established that we incorrectly applied law or USCIS policy in our prior decision. The Petitioner has not met her 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).

ORDER: The motion to reconsider is denied.

Cite as *Matter of L-D-R-G-C-*, ID# 134885 (AAO Jan. 30, 2017)