U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-L-

DATE: NOV. 23, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a speed skater and coach, seeks classification as an individual of extraordinary ability in athletics. *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 denied the Petitioner's Form I-140, Immigrant Petitioner Alien Worker. We dismissed the Petitioner's appeal and denied his subsequent motion.[1] The matter is now before us on combined motions to reopen and reconsider. For the reasons discussed below, we will deny the motions.

I. LAW

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

Following our dismissal of his appeal, the Petitioner filed combined motions to reopen and reconsider accompanied by a copy of an email from the [redacted] and a brief statement that did not contest or mention our appellate decision. The Petitioner did not assert new facts to be proved in the reopened proceeding. Nor did he cite binding precedent decisions or other legal authority establishing that we incorrectly applied the pertinent law or agency policy and that our decision was erroneous based on the evidence of record at the time. Accordingly, we denied

[1] *See Matter of S-L-*, ID# 926509 (AAO Feb. 27, 2018) and *Matter of S-L-*, ID# 1585106 (AAO Apr. 26, 2018).

[2] This email did not challenge any of our appellate findings. Instead, it discussed the Petitioner's activities that post-dated the filing of the Form I-140. Eligibility must be demonstrated at the time of the filing. *See* 8 C.F.R. § 103.2(b)(1).

his combined motions finding they did not satisfy the applicable requirements. Our decision noted that the Petitioner's statement requested additional time after the motion filing date to submit further documentation. We explained that, although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to us in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3).

We may, for proper cause shown, reopen the proceeding or reconsider the prior decision. 8 C.F.R. § 103.5(a)(1)(i). In his current combined motions, although the Petitioner provides further evidence and makes arguments relating to our appellate decision and the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i), (v), and (viii)[3], he has not presented new evidence or arguments establishing that our denial of his combined motions was in error. If the Petitioner were to provide evidence or arguments demonstrating that we erred by denying those motions, then there would be grounds to reopen and reconsider the proceeding. The Petitioner, however, has not shown that our prior decision was erroneous or provided new facts that would overcome the deficiencies we identified.

III. CONCLUSION

The Petitioner has not established that our previous decision was incorrect based on the record before us, nor does his new evidence on motion demonstrate his eligibility for the benefit sought.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of S-L-*, ID# 1762973 (AAO Nov. 23, 2018)

[3] Even if we considered his arguments and evidence, they are not sufficient to demonstrate that the Petitioner meets any of these regulatory criteria. For example, regarding the criterion at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner's event results from the 2018 post-date the filing of the petition and he has not demonstrated that the awards he received at this competition rise to the level of nationally or internationally recognized awards for excellence in the speed skating field. In addition, with respect to the letter from , the Petitioner's involvement with this club post-dates the filing of the petition. Furthermore, the letters he offers from are not sufficient to establish that he meets the requirements of 8 C.F.R. § 204.5(h)(3)(v) and (viii). Thus, the new evidence would not overcome our determination on appeal that he has not submitted the required initial evidence of either a qualifying one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).