U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-B-H-

DATE: MAY 15, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a drama director, 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 of the Nebraska Service Center denied the Petitioner's Form I-140, Immigrant Petition Alien Worker. We dismissed his appeal[1] and subsequently denied his motion to reconsider and motion to reopen.[2]

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). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 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.[3]

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[1] *See Matter of B-B-H-*, ID# 935324 (AAO Mar. 6, 2018).

[2] *See Matter of B-B-H-*, ID# 1642778 (AAO Oct. 1, 2018).

[3] *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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative

In addition, a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. PROCEDURAL HISTORY

The Director denied the petition, finding that the Petitioner did not satisfy the initial evidentiary criteria applicable to individuals of extraordinary ability, either a major, internationally recognized award or at least three of ten possible forms of documentation. Specifically, the Director determined that the Petitioner did not meet any of the criteria. We then dismissed his subsequent appeal, concluding that although the Petitioner fulfilled three criteria,[4] he did not establish sustained national or international acclaim, that he is among the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. Subsequently, we denied his motion to reconsider and motion to reopen, determining that the Petitioner did not demonstrate that we erred as a matter of law or policy and that his new evidence showed his eligibility for classification as an individual of extraordinary ability.

In the current motion to reconsider, the Petitioner presents a nearly identical brief with previously submitted documentation.

III. ANALYSIS

At the outset, the Petitioner did not include the required statement about whether or not the validity of the unfavorable decision has been, or is, the subject of any judicial proceeding. 8 C.F.R. § 103.5(a)(1)(iii)(C). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Moreover, for the reasons discussed below, the Petitioner's motion to reconsider does not establish that we erred in our prior decision.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Here, the Petitioner provides an almost identical brief that he previously presented in support of his prior motion, along with earlier submitted documentation. The Petitioner, however, did not offer any arguments or refer to any legal authority, demonstrating that we erred in denying his prior motions. Instead, the Petitioner makes references to the Director's original decision denying the petition and our initial decision dismissing the appeal without addressing our previous decision denying his motions. Further, a motion to reconsider is not a process by which a party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues that were decided in error

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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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

[4] We determined that the Petitioner satisfied the following three criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv), artistic display under 8 C.F.R. § 204.5(h)(3)(vii), and high salary under 8 C.F.R. § 204.5(h)(3)(ix).

or overlooked in the decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

Here, the Petitioner does not contend that our previous decision denying the motions was made in error in accordance with an incorrect application of law or policy. As noted above, a motion to reconsider must include specific allegations as to how we erred as a matter of fact or law in our prior decision. Because the Petitioner did not raise such allegations of error, we will deny the motion to reconsider.

IV. CONCLUSION

The Petitioner did not demonstrate that our previous decision denying his motions was based on an incorrect application of law or policy. 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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

Cite as *Matter of B-B-H-*, ID# 3143731 (AAO May 15, 2019)