



**U.S. Citizenship
and Immigration
Services**

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

In Re: 9809356

Date: AUG. 11, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a martial artist, seeks classification as an alien of extraordinary ability. *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 Texas Service Center denied the petition, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three. We dismissed the Petitioner's appeal from that decision. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

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). A motion to reconsider must establish that our 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.¹

¹ 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 and, if so, the court, nature, date, and status or result of the proceeding." 8 C.F.R. § 103.5(a)(1)(iii). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

In dismissing the appeal, we determined that the Petitioner did not satisfy any of the initial evidentiary criteria. In the Petitioner's motion to reconsider, he argues that he submitted evidence showing that he satisfied the following four criteria: lesser nationally or internationally recognized awards at 8 C.F.R. § 204.5(h)(3)(i), published material at 8 C.F.R. § 204.5(h)(3)(iii), judging at 8 C.F.R. § 204.5(h)(3)(iv), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). In his motion to reopen, the Petitioner presents additional documentation relating to the judging criterion. For the reasons discussed below, the Petitioner's motion to reconsider does not establish that we erred in our prior decision. Further, the new evidence submitted in support of the motion to reopen does not demonstrate that the Petitioner satisfied at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

A. Motion to Reconsider

The Petitioner contends that he meets four criteria. He does not, however, specifically argue that our decision was based on an incorrect application of law or policy. Disagreeing with our conclusions without establishing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). We will address the Petitioner's submission of new evidence under the motion to reopen section.

In reference to the awards criterion, in our prior decision we determined that the record reflects that the Petitioner received several martial arts awards, including first place in the [redacted] at the 2013 World Association of Kickboxing Organizations (WAKO) [redacted] Cup, second place at the 2014 World Kickboxing Federation [redacted] second place at the 2016 [redacted] [redacted] Muaythai Championship, first place in the [redacted] at the [redacted] [redacted] Muay Thai, [redacted], and first place in the [redacted] at the [redacted] Cup of Kickboxing. However, we concluded that the evidence submitted is insufficient to establish that any of these awards are nationally or internationally recognized awards for excellence in the Petitioner's field. Specifically, although the Petitioner submitted documentation, including from the WAKO General Rules and the World Kickboxing Federation Official Amateur Rulebook, that provides general criteria for the awards he received, such as how points are awarded and how team wins are determined, it does not demonstrate the national or international significance of the awards won.² On motion, the Petitioner acknowledges that he is "not enclosing any new evidence in support of this criterion" but argues that he "presented extensive evidence" in support of this criterion, including a "detailed description of the awards, their significance and the awarding organization." The Petitioner, however, does not cite to any legal precedent decisions or other authority establishing an error on our part in our previous determination regarding this criterion.

Regarding the published material criterion, in our prior decision, we concluded that the articles [redacted] [redacted] and [redacted] do not reflect published

² See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field.)

material about the Petitioner in professional or major trade publications or other major media, which include the title, date, and author. *See* 8 C.F.R. § 204.5(h)(3)(iii).³ Instead, the first article focused on the recent success of representatives of the Fight Club [redacted] only briefly mentioned the Petitioner, and did not include the author, while the second article summarized all of the fights taking place during the amateur [redacted] competition, of which one involved the Petitioner. We also determined that while the Petitioner provided online circulation statistics for the websites on which those articles appeared, he did not establish that these sites are major media or professional or major trade publications.

We further concluded that although the Petitioner provided additional articles that are about him related to his work from *Simya i Dim*, *Ljubart Chronicles*, *Martial Arts. Keys to Excellence*, *volyn.tabloyid.com*, and *www.volynpost.com*, and included print or online circulation statistics for each of those publications, the Petitioner did not submit comparative evidence establishing that these statistics are high relative to other circulation statistics, or otherwise show that the newspapers or websites are professional or major trade publications.⁴ In addition, except for the *Simya i Dim* article, all those articles did not include the name of the author, as required. On motion, the Petitioner states “I request that AAO reconsider its decision regarding this criterion.” However, as indicated previously, disagreeing with our conclusions without establishing that we erred as a matter of law or policy or pointing to precedent decisions that contradict our analysis of the evidence is not a ground to reconsider our decision.

For the reasons discussed above, the Petitioner has not demonstrated that our appellate decision was incorrect. We conducted a *de novo* review of the record on appeal, thoroughly analyzed the evidence, and ultimately concluded that the Petitioner did not satisfy at least three regulatory criteria. Here, the Petitioner did not show how we erred or misapplied law or policy. Accordingly, the Petitioner did not meet the requirements for a motion to reconsider.

B. Motion to Reopen

In reference to the judging criterion, we noted that the Petitioner claims eligibility through his participation as “a professional referee in Muay Thai” at regional, national, and international championships. In support, the Petitioner provided a copy of his credentials for the 2016 [redacted] World Muay Thai Championship, photographs of himself at that championship, a letter from [redacted] [redacted] at the World Muay Federation (WMF), a certificate from the WMF identifying him as an “International Referee & Judge C Class” and confirming his completion of the “Referees and Judges Course” during the aforementioned championship, and his work schedules as a referee for the 2015 [redacted] WKPA.”⁵ We determined that the evidence supports the Petitioner’s assertion that he has served as a professional referee at numerous martial arts events. Specifically, the WMF certificate establishes his qualifications as such and confirms that he completed the “referees and judges course” during the

³ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra* at 7.

⁴ *See* USCIS Policy Memorandum PM 602-0005.1, *supra* at 7 (instructing that evidence of published material in professional or major trade publications or in other major media publications about the individual should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

⁵ We noted that the Petitioner did not provide the full name of this organization.

2016 [redacted] World Muay Thai Championship, his credentials for this event clearly identify him as a coach and referee for that event, the photographs are sufficient to demonstrate that he participated in that role, [redacted]'s letter, provided by the Petitioner as evidence of his qualification as a referee, confirms that she saw him act in this role,⁶ and his work schedules for the 2015 Kickboxing [redacted] confirm that he worked as a referee for numerous fights during that event.

We further concluded that the Petitioner did not provide a description of his duties as a referee to demonstrate whether they involve evaluating or judging the work or skills of competitors as opposed to enforcing the rules of a match and ensuring sportsmanlike competition. In addition, we determined the record lacks other evidence, such as official competition rules for either event, showing that serving as a referee in those instances equates to participating as a “judge” of the work of others.⁷ Without further documentation, such as evidence that he awarded points or exercised his judgment in choosing the ultimate winner at those events, the evidence regarding serving as a referee at martial arts events is insufficient to meet this criterion.⁸

On motion, the Petitioner asserts that “I served as a judge and not as a referee.” He submits a screenshot from www.muaythai.sport/muaythai-rules/ that includes an excerpt of the Rules and Regulations of the International Federation of Muaythai Associations, the governing body of the sport, which provides as follows:

10. Referees & Judges

10.1 Referee: In the World Championships, World Cup, Continental Championships, continental Cup and other International tournaments each contest shall be controlled by an IFMA or Continental approved referee who shall officiate in the ring but shall not mark a scoring paper.

10.2 Judges: Each contest shall be marked by either five or three IFMA Judges who shall be seated separately from the public and immediately adjacent to the ring.

Here, the documentation submitted on motion does not detail what duties the Petitioner performed as a referee in the aforementioned competitions. For example, the Petitioner did not submit official competition rules showing that his activities in those competitions constituted participation as a judge of the work of others. As discussed in our appellate decision, if the petitioner’s duties involved simply enforcing the rules of a match and sportsmanlike competition, then his participation as a judge cannot be said to have involved evaluating or judging the skills or qualifications of the participants. Without further evidence that he judged the work of others, such as evidence that he awarded points or

⁶ We noted that while [redacted] indicates that she was “pleased to see [the Petitioner] as an International Judge and Referee at this event,” this is discrepant with the Petitioner’s own representation of his role at this event in the initial petition. Moreover, as noted in the brief accompanying the initial petition, the Petitioner provided this letter to demonstrate his certification as a referee.

⁷ Our prior decision noted that while the Petitioner provided a document titled “World Muay Federation” it does not describe the duties of referees and judges participating in World Muay Federation sanctioned events.

⁸ Our appellate decision noted that the record includes a copy of the “Official Amateur Rulebook” from the World Kickboxing Federation, which indicates that judges are responsible for scoring matches and referees mainly serve to enforce rules (sections 2.1.14 and 2.1.15.) The record does not include similar evidence regarding the WMF or the WKPA, the associations for which the evidence establishes that the Petitioner served as a referee.

exercised his judgment in choosing the ultimate winner, evidence regarding officiating at a match is insufficient to meet this criterion. Based on the foregoing, the Petitioner has not overcome our findings regarding the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv).

For the reasons discussed above, the new documentation submitted on motion does not overcome our original decision, concluding that the Petitioner did not satisfy any of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

The assertions made by the Petitioner on motion do not establish that our previous decision was grounded in an incorrect application of law or policy. In addition, the new evidence submitted on motion does not overcome the grounds underlying our previous decision or demonstrate his eligibility for this classification.

Although on motion the Petitioner maintains that he meets the requirements of one additional criterion, relating to leading or critical role at 8 C.F.R. 204.5(h)(3)(viii), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.⁹ In addition, because the Petitioner has not established that he meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we need not conduct a final merits determination to consider whether he has sustained national or international acclaim and is one of the small percentage at the very top of his field.¹⁰

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

⁹ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

¹⁰ See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).