U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12828281

Date: DEC. 31, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a martial arts instructor, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements through receipt of a major, internationally-recognized award or by meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Director also found that the Petitioner had not established that he would continue to work in his area of expertise in the United States. We dismissed the Petitioner's appeal of the Director's decision, as well as the Petitioner's subsequent motion to 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 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 a multi-part analysis. First, a petitioner can demonstrate international 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 criteria 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 meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *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).

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). 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. ANALYSIS

As noted in our previous decisions, the Petitioner is an athlete, instructor, referee and judge in several martial arts forms, and seeks to continue working as a martial arts instructor in the United States. Although the Director found that he did not meet any of the criteria under 8 C.F.R. § 204.5(h)(3), we disagreed in our decision on appeal, concluding that the evidence establishes that he has judged the work of other martial artists. In our most recent decision dismissing the Petitioner's motion to reconsider, we found that he had not demonstrated that our decision regarding the other two criteria he claimed, those relating to his receipt of lesser awards and his membership in associations requiring outstanding achievements, were based on an incorrect application of law or policy.

In his second motion to reconsider, the Petitioner reasserts his claim to the criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (ii), and argues that we did not adhere to the "preponderance of the evidence" standard per agency policy and caselaw.[1] When addressing his gold medal at the 2017 [redacted] Championship, he states that he submitted "relevant, initial and probative evidence" initially and in response to the Director's request for evidence, but that we "unilaterally impose[d] Petitioner to provide additional evidence." However, the submission of relevant and probative evidence alone does not mean that a petitioner has satisfied their burden of proof and established that all requirements have been met. As noted in the section of the USCIS memorandum cited by the Petitioner, once such evidence has been provided, "USCIS officers should objectively evaluate such initial evidence under a preponderance of the evidence standard to determine whether or not it is acceptable."[2] In our decision on appeal, we articulated the reasons why the evidence in the record did not show that the gold medal is nationally or internationally recognized, as required under 8 C.F.R. § 204.5(h)(3)(i), and we summarized that analysis in our decision on the Petitioner's first motion to reopen. We do not find that his reference to the preponderance of the evidence standard in this second motion to reconsider is sufficient to show that we incorrectly applied that standard of proof.

Regarding the criterion relating to his membership in associations at 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner repeats his assertion from his first motion to reconsider that the statement made in a

[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14.* 4, (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html, citing to *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).
[2] *Id.*

reference letter about his membership in the [redacted] Karate Association establishes that he meets the criterion's requirements. He now adds that this evidence was probative, and cites to the relevant USCIS memorandum for the proposition that officers should not impose novel evidentiary requirements beyond those in the regulations. As we noted above, however, the submission of relevant and probative evidence does not lead to the conclusion that all regulatory requirements have been met. In our previous two decisions, we analyzed the content of a letter from the secretary general of this organization, but found that the mention of the Petitioner's "outstanding success and extraordinary achievement in the field of Martial Arts" was not supported by independent evidence of its membership requirements. In other words, the fact that the secretary general made a vague statement about the Petitioner's accomplishments in his field does not support a finding that all honorary members of the organization are required to have outstanding achievements. We further concluded that while the letter indicated that this honorary membership was approved by the organization's Central Executive Committee, this was not sufficient to show that the members of this committee were recognized national or international experts, as required. The Petitioner does not explain how our previous decisions introduced novel evidentiary requirements beyond those in the plain language of this criterion.

The Petitioner also argues that we have refused to address the Director's finding that he did not meet the requirement at 8 C.F.R. § 204.5(h)(5) that the petition be accompanied by evidence that he will continue to work in his field in the United States. In both our most recent decision on motion and our appeal decision, we noted that we need not address that issue, since the Petitioner had not established that he met the initial evidentiary requirements under 8 C.F.R. § 204.5(h)(3). For the same reason, we will continue to reserve that issue.[3]

For all of the reasons discussed above, we conclude that the Petitioner has not established that our previous decision was incorrect based upon the evidence of record or that we misapplied relevant policy or law.

ORDER: The motion to reconsider is dismissed.

[3] *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).