U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8768216

Date: JUNE 9, 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" 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 petition, concluding that the Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria. The Director further found that the Petitioner did not establish that he would continue work in his area of expertise in the United States. We dismissed the Petitioner's appeal from that decision.[1] The matter is now before us on a 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 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

[1] As we found that the Petitioner had not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we found that we did not need to determine whether he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii), and did not address the Director's separate finding with respect to that issue.

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).

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. 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.[2]

II. ANALYSIS

The record shows that the Petitioner has been a competitive athlete, instructor, referee, and judge in several martial arts forms including kung fu, wushu, karate, and tai chi. He seeks to continue his work as a martial arts instructor in the United States. In dismissing the appeal, we determined that the Petitioner satisfied only one of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv), but that he fell short of establishing several others.[3] In the Petitioner's motion to reconsider, he argues that he submitted evidence demonstrating that he meets the criteria related to lesser awards at 8 C.F.R. § 204.5(h)(3)(i) and membership in associations at 8 C.F.R. § 204.5(h)(3)(ii).[4] For the reasons discussed below, the Petitioner's motion to reconsider does not establish that we erred in our prior decision.

On motion the Petitioner disputes our finding that the record does not demonstrate that his gold medal at the [redacted] World Martial Arts [redacted] Championship is a lesser nationally or internationally recognized award for excellence in the field. We noted that the record includes what appears to be an official event photograph of the Petitioner with a medal, on which he is identified as the [redacted] [redacted] Gold Medalist," which indicates that this event was sponsored by [redacted] [redacted] and that the record lacks any other evidence related to this event or to the Petitioner's performance in the event, such as official results, a list of competitors, the event's entrance requirements or rules, or media coverage of the event. We emphasized that the language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the Petitioner's awards be nationally or internationally recognized in the field of endeavor and it is his burden to establish every element of this criterion. We found that the record is insufficient to confirm that the Petitioner's win at the [redacted] [redacted] event constitutes his receipt of a nationally or internationally recognized prize or award for excellence in the field.

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[2] 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)(C). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

[3] In our appellate decision, we noted that although the Petitioner stated that his gold medal at the [redacted] World Martial Arts [redacted] Championship is "comparable to a Nobel prize or other internationally recognized award," he did not specifically claim that it satisfies the one-time achievement criterion at 8 C.F.R. § 214.2(h)(3). Rather, the Petitioner submitted the award as evidence of his eligibility under 8 C.F.R. § 204.5(h)(3)(i). We also noted that the regulation at 8 C.F.R. 204.5(h)(4) does not allow for submission of "comparable evidence" relating to the one-time achievement of a major, internationally recognized award, nor does the record demonstrate that the noted award qualifies as such an achievement. On motion, the Petitioner does not dispute our findings.

[4] On motion, the Petitioner does not claim to meet the previously claimed criterion related to published material in certain media at 8 C.F.R. § 204.5(h)(3)(iii).

In addition, we acknowledged that the Petitioner submitted testimonial evidence that referenced his gold medal at the aforementioned event, including a letter from his current employer, [redacted] in Nepal, characterizing his award as "a noteworthy and exemplary achievement as he is the first [redacted] to bag this Gold Medal in the history of World Martial Arts Championship," and a letter from the Rotary Club of [redacted] where he teaches [redacted] on a voluntary basis, stating that he "is the first [redacted] to get this top award." However, we found that these statements from individuals who know the Petitioner personally but have not claimed or established expertise in martial arts are insufficient to establish that he won a nationally or internationally recognized award. We stated, for example, that the Petitioner has not shown that his win attracted the level of media attention that might indicate the award's national or international recognition, or submitted information about the individuals who participated in the event, including their caliber and skill level, which might reveal the prestige and recognition of the competition.[5] Although the Petitioner disputes our finding that the record does not demonstrate that his gold medal at the [redacted] World Martial Arts [redacted] Championship is a lesser nationally or internationally recognized awards for excellence in the field, 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.

Similarly, the Petitioner contests our finding that the evidence regarding his memberships was insufficient to satisfy that criterion. The Petitioner provided evidence that he was the [redacted] of the [redacted] Kung Fu Association Nepal, the [redacted] of the Nepal World Martial Arts Association, an honorary member of the Nepal [redacted] Karate Association, and a member of the [redacted] Karate Association.[6] Specifically, the Petitioner asserts that we did not properly evaluate the evidence regarding his honorary membership in the Nepal [redacted] Karate Association. He claims that the statement contained in a letter from the Secretary General of Nepal [redacted] Karate-do Association that his honorary membership was approved by the Central Executive Committee, and mentioning his "outstanding success and extraordinary achievement in the field of Martial Arts," is sufficient to satisfy this criterion. We found, however, that the Petitioner provided insufficient independent evidence of the membership requirements for this association and the record does not establish that membership qualifications are judged by recognized national or international experts.

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[5] *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 (providing that for this criterion we should consider "[t]he number of awardees or prize recipients as well as any limitations on competitors" and that "an award limited to competitors from a single institution . . . may have little national or international significance").

[6] We noted that the submitted documentation indicated that the Petitioner was approved as a "Lifelong Member" in the [redacted] Karate Association in November 2018, ten months after he filed this petition. Therefore, this evidence cannot establish his eligibility at the time of filing and we will not further address it. *See* 8 C.F.R. § 103.2(b)(1). For the same, reason, we did not consider evidence indicating that the Petitioner was appointed as an honorary member of the World Martial Arts Committee (WMAC) in October 2018. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Similarly, we found that although a letter from [redacted] the Association Co-ordination Section of the Nepal National Sports Council confirms the Petitioner's roles as both [redacted] and, later, [redacted] of the Nepal [redacted] Kung Fu Association, neither this letter nor the other evidence in the record mentions the membership requirements for this association to show that it requires outstanding achievements, as judged by recognized national or international experts. We noted that the Petitioner submitted little other information about the [redacted] Kung Fu Association Nepal, other than that it was designated the National Martial Arts Committee (NMAC) of Nepal by the World Martial Arts Committee (WMAC) in January 2017, and found that without evidence of the association's membership requirements and selection criteria, we could not determine that the Petitioner's officer roles with this association meet the requirements of this regulatory criterion.[7] Again, while the Petitioner disputes our findings regarding this criterion, 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.

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.

ORDER: The motion to reconsider is dismissed.

[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).