U.S. Citizenship and Immigration Services

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

In Re: 10980551

Date: NOV. 24, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a rowing coach, 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 had satisfied at least three of ten initial evidentiary criteria, as required. The Petitioner filed a motion to reconsider. The Director granted the motion and affirmed the prior decision. The Petitioner then appealed the Director's decision, and we dismissed the appeal. 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. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

## I. MOTION REQUIREMENTS

A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

## II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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).

## III. ANALYSIS

After a highly successful career as a competitive rower, the Petitioner began a coaching career that has included work at the [redacted] Rowing Association [redacted] and the [redacted] Rowing Association [redacted]

Because the Petitioner has not established that he has received a major, internationally recognized award,[1] he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met five criteria, summarized below:

[1] The Petitioner initially claimed that some of his medals qualify as major, internationally recognized awards, but we concluded otherwise, and the Petitioner does not pursue this claim on motion.

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others; and
- (viii), Leading or critical role for distinguished organizations or establishments.

In our appellate decision, taking into account the Petitioner's activity both as a coach and as an athlete in his own right, we determined that he had satisfied three criteria, numbered (i), (ii), and (viii). In the final merits determination, we concluded that the Petitioner had established sustained national or international acclaim as an athlete, but had not achieved comparable acclaim as a coach. This distinction is crucial because the Petitioner seeks employment in the United States as a coach rather than as an athlete.

The Petitioner's arguments on motion center around 8 C.F.R. § 204.5(h)(3)(i), which requires documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. In our appellate decision, we concluded that the rowing crews that the Petitioner has coached won competitions and awards at the regional level, but not the national or international level. On motion, the Petitioner asserts that we misinterpreted and undervalued evidence regarding the [redacted] Regatta [redacted], an annual rowing competition in [redacted] Massachusetts, promoted as "the world's largest two-day rowing event."

The Petitioner states: "Petitioner's athletes, and thereby Petitioner himself, won two gold and two bronze medals" at the [redacted] In his brief on motion, the Petitioner quotes from letters previously submitted in support of the petition, attesting to the importance of the [redacted] and asserting that the performance of a team reflects on the skill and reputation of its coach.

The Petitioner previously submitted evidence showing that teams from [redacted] and [redacted] won medals at the [redacted] in 2015 and 2017, respectively. The head coach of U.S. National Rowing Team (USRowing) states that four of the "masters' boats [the Petitioner] coached" medaled at the [redacted] Other letters contain similar assertions, but these letters are not from individuals who worked at [redacted] or [redacted]

A coach from [redacted] states that the Petitioner "co-coached" two medal-winning teams at the 2015 [redacted] but he does not clarify the extent or timing of the Petitioner's involvement. The head coach of USRowing states that the Petitioner "started [redacted] as an assistant masters' coach" but "was soon tapped for a head junior coaching position." The [redacted] crews that won medals at the 2015 [redacted] were in the masters age class, not juniors, and the record does not establish that the Petitioner was directly involved with these crews at the time of the [redacted]

Statements from other officials at [redacted] and [redacted] provide even less corroboration. A November 2016 letter from [redacted]'s executive director and head coach does not indicate that the Petitioner had any role with the medaling crews at the 2015 [redacted]. Rather, she states that the Petitioner "is currently working toward his Level II Coaching Certification and is leading coaching clinics within our organization." In an August 2018 letter, [redacted]'s former board president states that the Petitioner coached "crews that

. . . won gold and silver medals" at regional events, but she does not mention the [redacted] Likewise, a September 2018 letter from [redacted]'s director includes many details of the Petitioner's work there, but gives no indication that the Petitioner coached the winning [redacted] crews. Given the Petitioner's emphasis on the [redacted]s reputation as an important international event, these omissions are significant.

A blog post on [redacted]'s own website, published immediately after the 2017 [redacted] states that [redacted] teams won gold medals in two events. The article names several [redacted] coaches, but does not mention the Petitioner's name at all. A 2017 [redacted] press release, which announced the hiring of the Petitioner and two other coaches, did not indicate that the Petitioner coached medaling crews at the 2015 [redacted]

Given the above evidence, it is significant that the individuals who state that the Petitioner coached the medaling crews do not appear to have been in a position to witness, and thus personally attest to, the nature and extent of his work with those teams. The first-hand and contemporaneous evidence does not consistently show that the Petitioner coached the crews that won the medals.

For the above reasons, the record is, at best, inconsistent with respect to the degree of the Petitioner's involvement with coaching teams that won medals at the [redacted] Therefore, the Petitioner has not established that our prior discussion of the [redacted] included errors that affected the outcome of the appellate decision. That discussion is the focal issue in the Petitioner's motion. As a result, the Petitioner has not established that the decision was incorrect based on the evidence of record at the time of that appellate decision.

The motion does not meet the requirements of a motion to reconsider, and therefore must be dismissed.

## IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reconsideration and has not overcome the grounds for dismissal of the appeal. The motion to reconsider will be dismissed for the above stated reasons.

**ORDER:** The motion to reconsider is dismissed.