U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10027559

Date: SEPT. 24, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a swimmer, seeks classification as an individual of extraordinary ability. 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, and we subsequently dismissed the appeal.[1] The matter is now before us on a motion to reconsider. Although she does not claim to file a motion to reopen, the Petitioner also submits new evidence. Accordingly, we will treat the new evidence as a motion to reopen.

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 deny the motions.

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 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*

[1] *See* In Re: 4597661 (Dec. 18, 2019).

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).

Further, 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. BACKGROUND

We determined that the Petitioner satisfied three of the initial evidentiary criteria: awards under 8 C.F.R. § 204.5(h)(3)(i), memberships under 8 C.F.R. § 204.5(h)(3)(ii), and published material under 8 C.F.R. § 204.5(h)(3)(iii). As such, we evaluated the totality of the evidence in the context of a final merits determination.[2] Based on this review, we concluded that the Petitioner did not establish her sustained national or international acclaim,[3] that she is among the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[4]

III. ANALYSIS

A. Motion to Reconsider

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 proceeding at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). The Petitioner argues that we "dismissed [her] appeal, in part, because she did not include evidence of her lesser placements in competitive swimming" that "is an improper application of law." We determined that the Petitioner did not sufficiently document her swimming career establishing a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Specifically, "while the Petitioner presented evidence showing her finishes in selected tournaments and championships, she did not demonstrate her standings or results in the majority of her other swimming events," and we provided several examples. Further, as the Petitioner seeks classification as an alien of extraordinary ability as a swimmer, the Petitioner's swimming record and history are relevant in showing whether she has sustained national or international acclaim and is one of that small percentage who has risen

---

[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* 13 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

[3] *Id.* at 14 (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

[4] *Id.* at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).[5] Accordingly, the petitioner did not establish that we incorrectly applied law or policy.

Similarly, the Petitioner contends that we "alleged that [she] lacked sustained acclaim for the time period starting after 2016," and [t]his is an improper application of law, as this time period cannot be considered." In addition, the Petitioner claims that "she filed her initial petition on August 18, 2017," and the inclusion of evidence occurring after this date "would have been unlawful and [we] erred in considering the time after August 18, 2017." The decision, however, does not reflect that we required the Petitioner did to submit evidence of her finishes and placements occurring after she filed her initial petition. Instead, we concluded that the Petitioner did not establish "that she received any awards since 2016" and "besides the [redacted] Championships, she has not shown that she has competed against top swimmers since 2015, let alone winning medals or awards." Again, the Petitioner did not demonstrate that she received any swimming awards from 2016 until she filed her petition in August 2017, nor did she show that she competed against other top swimmers from 2015 until she filed her petition, except for the [redacted] Therefore, the Petitioner did not show the required sustained national or international acclaim and career of acclaimed work in the field. *See* section 203(b)(1)(A)(i) of the Act, 8 C.F.R. § 204.5(h)(3), and H.R. Rep. No. at 59. Therefore, the Petitioner did not establish that we erroneously applied law or policy.

In addition, the Petitioner argues that she did not provide "conflicting letters" regarding her results from the 2012 Olympic Games. As discussed, the Petitioner submitted a letter from the secretary general for the [redacted] Olympic Committee [redacted] who indicated that the Petitioner "was one of the top 50 competitors in the Olympic Games ranking," and another letter from the president of [redacted] who indicated that the Petitioner "finished among the top 40 athletes in the world in the Olympic Games ranking." Although she states that these statements are "objectively true," the issue relates to where she finished at the 2012 Olympic Games, in order to show national or international acclaim, that she is one of the small percentage who has risen to the very top of the field of endeavor, and that her achievements have been recognized in the field of expertise. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2) and (3). Here, the letters, nor the record at the time of our decision, showed her placement at the 2012 Olympic Games.

For the reasons discussed above, the Petitioner did not establish that we incorrectly applied law or policy in our latest decision. Accordingly, the Petitioner did not demonstrate that she meets the requirements of a motion to reconsider. Therefore, we will deny her motion. Furthermore, the Petitioner does not contest or address any of our other conclusions relating to her other claims and evidence in our finals merits determination showing that we erred as a matter of law or policy.

[5] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 2.

B. Motion to Reopen

We will similarly deny the Petitioner's motion to reopen. A motion to reopen must state new facts and be supported by documentary evidence. *See* 8 C.F.R. § 103.5(a)(2). The Petitioner submits a screenshot from sports-reference.com showing that the Petitioner ranked [redacted] in the "Women's [redacted] metres Backstroke" at the 2012 Olympic Games, and a document from an unidentified website showing her collegiate record from 2013 – 2017. Considering both the new evidence on motion and the evidence contained in the record, the Petitioner did not demonstrate that she garnered sustained national or international acclaim in the field and that her achievements have been recognized in the field of expertise, including finishing [redacted] at the 2012 Olympic Games and competing for the University [redacted] *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). While the Petitioner offers an article from the usatoday.com regarding college swimmers who medaled and earned money from the 2016 Rio de Janeiro Olympics, she did not show how she compares to them or that she has distinguished herself in the field as being one of that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

In addition, the Petitioner provides three documents in a foreign language without any English language translations. Any document in a foreign language must be accompanied by a full English language translation. *See* 8 C.F.R. § 103.2(b)(3). Regardless, the documents appear to pertain to events occurring in 2018, and the Petitioner submits evidence relating to swimming competitions and finishes in 2018 and 2019. The Petitioner must establish eligibility at the time of filing the benefit request. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we need not further address these documents on motion.

The Petitioner's additional evidence on motion, including evidence in the record, does not show her sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. Accordingly, we will deny her motion to reopen.

IV. CONCLUSION

The Petitioner has not shown that we incorrectly applied law or policy in our previous decision based on the record before us, nor does her new evidence on motion demonstrate that she qualifies as an alien of extraordinary ability for this highly restrictive classification.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.