U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14285462

Date: APR. 5, 2021

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 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 Texas Service Center denied the petition, and we dismissed the appeal. Subsequently, we dismissed a combined motion to reconsider and reopen.[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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the 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 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 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).

Further, a motion to reconsider is based on an *incorrect application of law or policy*. 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.

[1] *See* In Re: 9809356 (AUG. 11, 2020).

II. ANALYSIS

The Director concluded that the Petitioner did not demonstrate that he received a major, internationally recognized award and that he satisfied only one of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv), of which he must meet at least three. In dismissing the appeal, we withdrew the Director's determination relating to the judging criterion and decided that the Petitioner did not fulfill any of the claimed criteria. On motion, the Petitioner requested us to reconsider our decision without showing how we erroneously applied law or policy. Further, while he provided additional documentation, we determined that the Petitioner did not establish that the new evidence demonstrated his eligibility for the judging criterion.

For the reasons discussed below, the Petitioner's current motion to reconsider does not overcome our prior decision.

A. Judicial Proceeding Statement

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires the motion to be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceedings and, if so, the court, nature, date, and status or result of the proceeding." The Petitioner, however, did not include the required statement. Therefore, the Petitioner's motion does not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

B. 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). On motion, the Petitioner submits a brief mirroring his previous motion brief. In fact, besides the brief's introductory paragraph, the current motion brief is identical to the prior motion brief, without any mention or discussion of our decision dismissing his combined motions. Disagreeing with our conclusions without showing 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.)

As he did not demonstrate that we incorrectly dismissed his prior motions, the Petitioner did not establish that he meets the requirements of a motion to reconsider. Therefore, we will dismiss his current motion.

III. CONCLUSION

The Petitioner has not shown that we incorrectly dismissed his previous motions based on the record before us.

ORDER: The motion to reconsider is dismissed.