U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16156434

Date: May 13, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, an actress, seeks classification as an individual 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification, as required. We dismissed the Petitioner's subsequent appeal of the denial. The Petitioner then filed a combined motion to reopen and motion to reconsider, which we also dismissed. The matter is now before us on a combined motion to reopen and 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 both the motion to reopen and the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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 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 individuals with 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. 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 their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they 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) (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

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision," which in this case was our dismissal of the Petitioner's previous combined motion to reopen and motion to reconsider. *See* 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts to warrant reopening or established that our decision to dismiss the previous combined motion was based on an incorrect application of law or USCIS policy.

A. Prior AAO Decision

We dismissed the Petitioner's appeal after determining that she did establish that she meets any of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).[1] In the previous motion to reopen, the Petitioner submitted evidence that she had authored a book published in September 2019, almost two years after the petition's December 2017 filing date. The Petitioner maintained that this new evidence demonstrated that she satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vi), which relates to authorship of scholarly articles in the field in professional or major trade publications or other major media. In dismissing the motion to reopen, we determined that the Petitioner had not demonstrated that her publication of the e-book satisfied any of this criterion's requirements. Specifically, it was not shown to be a scholarly article in the acting field, nor did the self-published e-book qualify as a professional

[1] On appeal, the Petitioner maintained that she met four criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to lesser nationally or internationally recognized awards or prizes, published material in major media, original contributions of major significance in the field, and performance in a leading or critical role for organizations or establishments that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii), (v) and (viii).

or major trade publication or other major media. Further, because the book was published in 2019, it could not establish that the Petitioner met the eligibility requirements for this criterion at the time of filing, as required by 8 C.F.R. § 103.2(b)(1). Accordingly, we determined that she did not show proper cause to warrant reopening.

With respect to the prior motion to reconsider, we observed that, apart from the Petitioner's new claim that she could satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vi), the brief submitted in support of the motion was essentially identical to the Petitioner's previous appellate brief. Although the Petitioner contended that we erred in our dismissal of the appeal, she did not attempt to identify or rebut any specific errors in our decision or establish how we had misapplied the law or USCIS policy in adjudicating her appeal. For this reason, we also dismissed the motion to reconsider.

A. Motion to Reopen

In support of the current motion, the Petitioner submits new evidence intended to demonstrate that she seeks to enter the United States to continue to work in her area of extraordinary ability, as required by section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. § 204.5(h)(5). However, the Petitioner's intention to work as an actress in the United States is not at issue in this proceeding, as it was not a basis for either the denial of the petition or our dismissal of her appeal or previous motion. As discussed, the petition was denied and the appeal dismissed because the Petitioner did not establish that she satisfies the initial evidence requirements for this classification by meeting at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner does not claim that the newly submitted evidence, most of which dates from 2020, relates to the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Further, even if it did, the Petitioner must establish that she met at least three of those criteria as of the date of filing in 2017, as required by 8 C.F.R. § 103.2(b)(1). The new evidence establishes that the Petitioner has her own YouTube channel on which she posts content such as commercials, makeup and beauty tutorials, and interviews with other performing artists. She provides background information regarding some of the individuals who collaborated with her on these videos. She also provides evidence that she appeared as a guest on the [redacted] podcast in [redacted] 2020, as well as screenshots from Instagram as evidence of her attendance at several events in 2020.

The Petitioner's newly submitted evidence, which does not relate to the grounds for denial or pre-date the filing of the petition, does not establish proper grounds for reopening. We will therefore dismiss the motion to reopen.

C. Motion to Reconsider

The Petitioner's brief in support of the motion to reconsider, apart from a section addressing the new evidence discussed above, is almost identical to the briefs that she previously submitted on appeal and in support of the first motion. The Petitioner includes a general statement that we erred in dismissing the previous motion but she does not specifically address our reasons for dismissal, nor does she attempt to identify or rebut any specific errors in that decision.

A motion to reconsider must specify the factual and legal issues that were decided in error or overlooked in our prior decision. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).[2] ("[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior . . . decision. The moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision . . . .")

Here, the Petitioner has not specifically addressed our most recent decision or stated any reasons for reconsideration of that decision. Nor does she contend that our prior decision was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence of record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider and must be dismissed.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration. Accordingly, the combined motion to reopen and motion to reconsider will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[2] *O-S-G-* relates to motions to reconsider before the Board of Immigration Appeals, governed by 8 C.F.R. § 1003.2(b)(1), which states: "A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority." These requirements are fundamentally similar to those found at 8 C.F.R. § 103.5(a)(3), and therefore the same logic applies.