U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17269097

Date: May 25, 2021

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 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met at least three of the ten initial evidentiary criteria for this classification, as required. The Director also determined that the Petitioner did not demonstrate that he would continue to work in his area of expertise in the United States. We dismissed the Petitioner's appeal of the Director's decision, as well as two subsequent motions to reconsider. The matter is now before us on a third motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion to reconsider.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if an individual 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.

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

II. MOTION REQUIREMENTS

To merit reopening or reconsideration, a petitioner must meet the formal filing requirements (such as, for instance, submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), and show proper cause for granting the motion. 8 C.F.R. § 103.5(a)(1).

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). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

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 second motion to reconsider. *See* 8 C.F.R. § 103.5(a)(1)(i). Therefore, the issue before us is whether the Petitioner has established that our decision to dismiss that motion was based on an incorrect application of law or USCIS policy.

The Petitioner is an athlete, instructor, referee, and judge in several martial arts disciplines and seeks to continue working as a martial arts instructor in the United States. The Director denied the petition after concluding that the record did not establish that the Petitioner meets any of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), of which he must meet at least three. We dismissed the Petitioner's subsequent appeal after determining, on *de novo* review, that the Petitioner satisfied only one of the three criteria he claimed to meet, related to judging the work of others in his field, at 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner then filed a motion to reconsider, which we also dismissed. We concluded that the Petitioner had not demonstrated that we incorrectly applied the law or USCIS policy in determining that he did not meet the evidentiary criteria which relate to receipt of nationally or internationally recognized awards and memberships in associations that require outstanding achievements, at 8 C.F.R. § 204.5(h)(3)(i) and (ii).

In his second motion to reconsider, the Petitioner reasserted his claim that he satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (ii). He argued that we did not adhere to the preponderance of the evidence standard as required by agency policy and caselaw[1] and that we "unilaterally impose[d] Petitioner to

[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM)* Chapter 22.2, AFM Update AD11-14 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/Policy Manual.html, citing to *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

provide additional evidence." In dismissing the motion, we articulated again why the evidence the Petitioner submitted did not meet his burden to establish that he met all elements of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) and (ii). We emphasized that the submission of relevant evidence in support of a criterion does not automatically establish that a petitioner has met their burden of proof and demonstrated that all requirements have been met. We further determined that the Petitioner did not establish how our previous decisions had introduced novel evidentiary requirements beyond those included in the plain language of the regulatory criteria.

With the current motion, the Petitioner maintains that he meets the awards and membership criteria at 8 C.F.R. § 204.5(h)(3)(i) and (ii) and contends that we did not adequately address his argument that we applied an incorrect standard in evaluating his eligibility for the requested classification. Specifically, the Petitioner argues that while we acknowledged the preponderance of the evidence standard in our most recent decision, we did not explain how we properly applied that standard in our previous decisions. He asserts that our appellate decision relied on "vague statements" and failed to explain how his evidence was insufficient to meet his burden of proof.

To satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner must demonstrate that he received prizes or awards, and that they are nationally or internationally recognized for excellence in his field of endeavor. The Petitioner has consistently claimed that he meets this criterion based on his receipt of a gold medal at the [redacted] Martial Arts [redacted] Championship held in [redacted]. The "preponderance of the evidence" standard requires that the evidence demonstrate that the claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). The truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, we must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Id.*

As noted in our prior decisions, 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] Gold Medalist" at the [redacted] Martial Arts [redacted] Championship. The limited information provided by this document indicates that the competition was sponsored by [redacted] This evidence has sufficient probative value to establish that the Petitioner was the recipient of this award and that the award is in his field of martial arts. The Petitioner has not explained, however, how this documentation establishes, by a preponderance of the evidence, that the medal he received is a nationally or internationally recognized award or prize for excellence in his field.

Neither the regulations nor USCIS policy guidance indicate that providing evidence of a petitioner's receipt of an award or prize is sufficient to meet their burden of proof to establish that the award is also a nationally or internationally recognized award for excellence in a given field. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize

recipients as well as any limitations on competitors.[2] Based on this guidance, submission of evidence of a receipt of a petitioner's prize or award alone, without any context or information regarding the award's significance, is not necessarily sufficient to meet the Petitioner's burden of proof to meet all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(i).

The record does not contain any other evidence regarding the [redacted] Martial Arts [redacted] Championship event, such as official results, a list of competitors, the event's entrance requirements or rules, media coverage of the event, or other information regarding the nature and scope of the event. We cannot determine based on the name of this competition alone that any medal awarded at the event is a nationally or internationally recognized prize or award. The Petitioner also submitted letters from two personal contacts in [redacted] who mention his receipt of a gold medal at this event, but we did not find such letters to be probative of the national or international recognition of the prize in his field, as neither letter was from an individual who claimed any expertise in the martial arts. For these reasons, we concluded that the Petitioner did not demonstrate that the medal he received at this event was a nationally or internationally recognized prize or award.

While the Petitioner continues to disagree with this determination, he has not established that we incorrectly applied the law or USCIS policy in dismissing his prior motion to reconsider or that we failed to apply the preponderance of the evidence standard to our evaluation of the evidence submitted in support of the awards criterion at 8 C.F.R. § 204.5(h)(3)(i).

Regarding the criterion relating to his membership in associations at 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner asserts that we did not properly evaluate his evidence. In reference to our decision dismissing his second motion to reconsider, he states:

> The AAO now states that in particular [the Petitioner's] the [*sic*] [redacted] Karate Association could not be considered because the record does not establish that membership in this organization requires outstanding achievement. However, the AAO states so right after acknowledging that the Central Executive Committee of the above organization has awarded honorary membership to [the Petitioner] precisely because of his "outstanding success and extraordinary achievement in the field of Martial Arts" .... The contradiction in the AAO's reasoning could not be more evident and the criteria should have been considered met by [the Petitioner].

The Petitioner further argues that the statements made in a letter from the secretary general of the [redacted] Karate Association are sufficient to establish that his membership meets all elements of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii), and that we imposed novel evidentiary requirements beyond those found in the plain language of the applicable regulation by determining that additional evidence was necessary.

To meet the criterion at 8 C.F.R. § 204.5(h)(3)(ii), a petitioner must demonstrate that the association in which they claim membership requires that members have outstanding achievements in the field as judged by recognized national or international experts in that field. Here, we acknowledged the contents of the letter from the secretary general of the [redacted] Karate Association and

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

explained why it did not meet the Petitioner's burden to establish that he meets each element required by the plain language of the regulation.

First, we noted that the referenced letter was not supported by independent evidence of this association's membership requirements. We observed that "the fact that the secretary general made a vague statement about the Petitioner's accomplishments in the field does not support a finding that all honorary members of the organization are required to have outstanding achievements." On motion, the Petitioner asserts that we improperly required that he establish not only that his membership was granted based on his outstanding achievements in the field, but also required him "to show that this was true for all members of the organization, which is evidence impossible to gather for applicants as it refers to other people."

The Petitioner has misinterpreted the portion of our decision quoted above. It is the Petitioner's burden to establish that the association requires outstanding achievements as an essential condition of membership, a burden that can be met by fully documenting the association's formal membership requirements. We did not impose a requirement that the Petitioner gather evidence of the outstanding achievements of other honorary members of the same association. In this case, the letter from the secretary general of the [redacted] Karate Association refers to portions of the association's constitution which presumably discuss its membership requirements. The relevant portions of this constitution have not been provided for review, the secretary general's letter does not clearly state what those membership requirements are, and the record lacks any other evidence related to the association's membership requirements. For these reasons, we determined that the letter did not meet the Petitioner's burden to establish that the association requires honorary members to demonstrate outstanding achievements as a condition of membership.

Second, we acknowledged that the letter from the [redacted] Karate Association's secretary general indicates that the Petitioner's honorary membership was approved by the organization's Central Executive Committee. However, we emphasized that this statement was not sufficient to show that the members of the committee who are responsible for judging or approving honorary membership are recognized national or international experts in the field as required by 8 C.F.R. § 204.5(h)(3)(ii). The Petitioner does not acknowledge or address this determination on motion and has not established how we misapplied the law or USCIS policy by requiring that he satisfy all elements of the criterion.

For the foregoing reasons, the Petitioner has not established that we imposed novel evidentiary requirements with respect to this criterion, that we failed to apply the preponderance of the evidence standard, or that we otherwise incorrectly applied the law or USCIS policy in dismissing his prior motion to reconsider.

Finally, the Petitioner argues that we have refused to address the Director's determination that he did not provide evidence that he will continue to work in his area of expertise in the United States, as required by 8 C.F.R. § 204.5(h)(5). In our most recent decision dismissing his second motion, and in our two prior decisions, we noted that we need not address that issue since the Petitioner had not established that he met the initial evidentiary requirements under 8 C.F.R. § 204.5(h)(3) and therefore could not establish his eligibility for the requested classification. The Petitioner does not argue that

we misapplied the law or USCIS policy by reserving this issue. For the reasons discussed above, we will once again reserve this issue.[3]

IV. CONCLUSION

The Petitioner has not shown proper cause for reconsideration of our prior decision. Accordingly, the motion to reconsider will be dismissed.

ORDER: The motion to reconsider is dismissed.

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).