U.S. Citizenship and Immigration Services

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

In Re: 18328606

Date: SEP. 07, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a singer, 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 had satisfied at least three of ten initial evidentiary criteria, as required. The Director then reopened the proceeding twice – first on the Petitioner's motion, and later treating an untimely appeal as a motion to reopen under 8 C.F.R. § 103.3(a)(1)(v)(B)(*1*). Both times, the Director again denied the petition. We dismissed the Petitioner's appeal, concluding that, although she met at least three of the initial evidentiary criteria, she had not established eligibility in the final merits analysis. 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.

## II. ANALYSIS

In our appellate decision, we noted that the Petitioner asserts that she "has obtained the highest level of fame in her native [redacted] and international recognition in pop singing." The record shows the Petitioner performed on the televised [redacted] competition program. Media interviews in 2009 and 2014 mention she worked as a "specialist" at [redacted]'s Ministry of Culture but provide few details about this employment. The Petitioner also acted in the film [redacted] (2015), but the record does not indicate that she has continued to pursue acting work. We also noted that the record shows the Petitioner has spent an increasing amount of time in the United States since 2015. Her most recent entry was in 2017 as a B-2 nonimmigrant visitor for pleasure. She later changed status to an O-1B nonimmigrant with extraordinary ability in the arts through a petition filed by [redacted] and operates a studio [redacted] where she provides voice lessons to children.

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director concluded that the Petitioner satisfied only two of the initial evidentiary criteria, awards at 8 C.F.R. § 204.5(h)(3)(i) and judging at 8 C.F.R. § 204.5(h)(3)(iv). In our decision dismissing the Petitioner's appeal, we determined that she also satisfied the criterion relating to published material at 8 C.F.R. § 204.5(h)(3)(iii). Because we concluded that the Petitioner satisfied at least three of the initial evidentiary criteria, we conducted a final merits determination in which we reviewed the record as a whole, including the evidence the Petitioner submitted under other claimed criteria.[1] As discussed above, in a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *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.[2] Based on this review, we concluded that the Petitioner did not establish her sustained national or international acclaim, 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.

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

[1] During the course of the proceeding, the Petitioner had also claimed to meet the criteria relating to membership in associations at § 204.5(h)(3)(ii), display at artistic exhibitions or showcases at 8 C.F.R. § 204.5(h)(3)(vii), leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and high salary at 8 C.F.R. § 204.5(h)(3)(ix).

[2] *See also* 6 *USCIS Policy Manual* F.2 https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (stating 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 for the immigrant classification).

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 asserts that we erred in our evaluation of the submitted media coverage about her and relating to her work. The Petitioner maintains that she submitted "a plethora of media coverage" and "[t]he fact that [redacted] media continues to reach [her] is already an indication of the continued interest from [redacted] population for her" and "proof of the sustained acclaim" she enjoys "as a top [redacted] pop singer." Our appellate decision focused, in part, on several articles the Petitioner submitted that specifically relate to her and her work as one indicator of whether she has enjoyed "a career of acclaimed work" in the field as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). In our final merits determination, we concluded that the record, including media reporting on her and her activities, indicates that the Petitioner had a successful career in [redacted] but it does not establish that she sustained a qualifying level of acclaim up to the time of filing in July 2018. *See* 8 C.F.R. § 103.2(b)(1). The Petitioner has not established on motion that we misapplied the law or USCIS policy in reaching this conclusion based on the evidence she submitted.

For instance, as discussed in our decision, in a translated September 2015 interview, conducted shortly after a two-month visit to the United States, the Petitioner stated: '[redacted] is too small, you can become popular with one clip and one song. In America everyone sings . . . . After [a television appearance in [redacted], when I was walking in the streets everyone asked me [for] autographs and it is not happening in [the] USA." In the same interview, the Petitioner explained that she found work performing in [redacted] lounges, and promotional fliers reproduced in the record corroborate this public statement, advertising her performances at small venues such as restaurants, coffee shops, and cultural centers. We noted that this interview took place almost three years before the petition's filing date, and the record does not show that her career gained momentum afterward. Although the Petitioner appeared on [redacted]'s version of *Dancing with the Stars* in 2016, the record does not document any comparably high-profile activity since then.

In addition, the Petitioner argues on motion that although she "has risen to the very top of the field of pop singing in [redacted] and not in the USA" we must also "take into the fact whatever achievements [the Petitioner] has reached in the USA while she has been here." Our appellate decision did examine the Petitioner's most recent professional accomplishments and concluded that the record does not show that she has earned sustained national acclaim in the United States. Rather, we found that her recognition in the United States appears to be largely confined to the [redacted] community in [redacted]. We noted that [redacted] media continued to interview her after she relocated to the United States, but in those

interviews, she discusses staying at home with a new child, teaching singing lessons, and singing at corporate events. The Petitioner has not documented any U.S. media coverage apart from local, [redacted] language media. The Petitioner has not shown on motion that we misapplied the law or USCIS policy in reaching this determination based on the documentation submitted.

For example, one such article from 2017 discussed the Petitioner's achievements between 2001 and 2015 and stated that "[h]er dream is to conquer [redacted] . . . . Meanwhile she shares her mastery with [redacted] children, participates in charity concerts, and recently she performed at [a] [redacted] festival." We also noted that the Petitioner sang at the opening of a fashion show in [redacted] media reported that the Petitioner "performed at [redacted] Fashion Week," but photographs from the event show the legend [redacted] Fashion Week." We found that the Petitioner had not established that the two names correspond to the same event, or that one is a part of the other. Although on motion the Petitioner provides screenshots from the website of [redacted] Fashion Week, to show the two "are very much related events," these items show only that [redacted] Fashion Week organizes short film and fashion festivals including in [redacted] during [redacted] Fashion Week, not that one is part of the other. Further, we noted that the Petitioner told [redacted] interviewers that her performance at [redacted] Fashion Week generated "a huge response," but the record does not include any U.S. media coverage of the event.

Moreover, we determined that although the Petitioner's other recent performances have been tied to [redacted] cultural events, some of which have been at well-known locations, such as the [redacted] the Petitioner had not shown that these appearances generated attention at a level consistent with national or international acclaim, or that her participation was highlighted either before or after the events. For instance, a printout from the [redacted]'s website discusses a performance by the [redacted] but the Petitioner's name does not appear in the article.

Further, the Petitioner asserts on motion that she was asked to act in the movie [redacted] "to capitalize on her popularity and reach a wider audience," and she provides a screenshot from IMDbPro of the cast listing for [redacted] showing she performed the role of [redacted] While our appellate decision acknowledged that the Petitioner acted in the film, our final merits analysis did not further discuss it as we noted the record does not indicate that she has continued to pursue acting work.

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. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).[3] ("[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 . . . .")

Finally, the Petitioner argues on motion that her prior approval as an O-1 nonimmigrant of extraordinary ability in the arts "as a pop singer . . . popular among [redacted]" automatically establishes eligibility for immigrant extraordinary ability classification. Extraordinary ability in the field of arts in the nonimmigrant context, however, means distinction, which is not the same as

[3] *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.

sustained national or international acclaim. Section 101(a)(46) of the Act explicitly modifies the criteria for the O-1 extraordinary ability classification in such a way that makes the nonimmigrant O-1 criteria less restrictive for an individual in the arts, and thus less restrictive than the criteria for immigrant classification pursuant to section 203(b)(1)(A) of the Act. Therefore, while USCIS has previously approved an O-1 nonimmigrant petition for the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law.

## III. CONCLUSION

We conducted a *de novo* review of the record on appeal, thoroughly analyzed the evidence, and ultimately concluded that while the Petitioner satisfied at least three of the evidentiary criteria, she did not establish the required sustained national or international acclaim for this highly restrictive classification. For the reasons discussed above, the Petitioner has not demonstrated that our appellate decision was incorrect based on the evidence before us at the time of our decision or that it was based on a misapplication of law or USCIS policy. Accordingly, the Petitioner did not satisfy the requirements for a motion to reconsider. Therefore, we will dismiss her motion.

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