U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20631716

Date: DEC. 13, 2022

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 in the arts. 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 required evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) or that she was coming to the United States to continue to work in her area of expertise. The Director then reopened the proceeding twice – first on the Petitioner's motion, and then treating the Petitioner's untimely appeal as a motion to reopen under 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*). The Director denied the petition both times. We dismissed the Petitioner's subsequent appeal, finding that while the Petitioner did meet three of the ten evidentiary criteria, she had not demonstrated sustained national or international acclaim or that she was at the very top of her field of endeavor at the time of filing or adjudication. We then dismissed the Petitioner's motion to reconsider for the same reasons. 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. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not previously been submitted in the proceeding, which includes the original application. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

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 evidence in the record of proceedings at the

time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested benefit.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (*citing INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *See INS v. Abudu*, 485 U.S. at 110.

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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).

This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we 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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Motion to Reopen

The first issue on motion is whether the petition should be reopened and approved based on new facts supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner provides two new letters of support from [redacted] and [redacted], [redacted] singers who have received the immigrant visa classification that the Petitioner is requesting. The writers of these letters both state that the Petitioner is highly talented and prominent in the [redacted] community and that since they received the requested benefit, the Petitioner should receive it as well since she is more famous than they are.

Every visa adjudication applies existing law and policy to the specific facts of an individual case. The fact that the letter writers, like the Petitioner, are singers from [redacted] does not establish that the specific circumstances of their cases were comparable to those of the Petitioner. Furthermore, a decision that was not published as a precedent does not bind U.S. Citizenship and Immigration Services officers in future adjudications. *See* 8 C.F.R. § 103.3(c).

Additionally, the letters do not introduce new facts, as required at 8 C.F.R. § 103.5(a)(2). We addressed the Petitioner's arguments and documentation regarding her popularity with the [redacted] community in our prior decision, noting that this does not constitute the national or international level of acclaim required for the requested benefit. Since the remainder of the brief pertains to previously submitted evidence that was considered in our prior decisions, the Petitioner has not met the requirements of a motion to reopen, and the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

B. Motion to Reconsider

The second issue on motion is whether our prior decision was based on an incorrect application of law or policy, based on the evidence in the record of proceedings at that time of that decision. 8 C.F.R. § 103.5(a)(3). The brief submitted on motion states that our consideration of the Petitioner's achievements since arriving in the United States was unsupported by policy, since petitioners can apply for the requested visa classification while abroad. However, this misinterprets our prior decision.

The relevant regulatory requirement is not that the Petitioner demonstrate achievements in the United States, but that they demonstrate that they have sustained a national or international level of acclaim, as required at section 203(b)(1)(A)(1) of the Act, at the time of filing and through the time of adjudication.[1] Our prior decision stated that while the Petitioner enjoyed a successful career in [redacted] her qualifying accomplishments dated from 2016 and earlier, and she had not maintained a qualifying level of acclaim through the time the petition was filed in 2018. The Petitioner had been residing in the United States for over a year at the time she filed the underlying petition and for over four years at the time of our prior decision. It was therefore appropriate to scrutinize her time in the

[1] An applicant or petitioner must establish that they are eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

United States to determine whether she continued to be at the very top of her field of endeavor. As noted in the *USCIS Policy Manual*, if a person was recognized for a particular achievement, USCIS should determine whether the person continues to maintain a comparable level of acclaim in the field of expertise since the person was originally afforded that recognition. A person may, for example, have achieved national or international acclaim in the past but then failed to maintain a comparable level of acclaim thereafter. *See generally* 2 *USCIS Policy Manual* A.1, https://www.uscis.gov/policy-manual.

The Petitioner also states that we erred by stating that she participated in the [redacted] movie [redacted] as an actor, since she was hired for the role based on her fame as a singer, which demonstrates her eligibility. Our prior decision addressed this argument and acknowledged the Petitioner's success in [redacted] prior to moving to the United States. However, as previously explained, the record does not establish that she sustained a qualifying level of acclaim through 2018, when she filed the underlying petition. The Petitioner participated in [redacted] in 2015. Characterizing her role as a singing one instead of an acting one does not overcome the issue of her level of acclaim at the time of filing.

Finally, the Petitioner states that [redacted] letter of support demonstrates that our prior decision "misapplies the standards and criteria" for the requested benefit, since [redacted] received the requested benefit but believes the Petitioner to be more famous and deserving. We disagree. A motion to reconsider must show that our prior decision was incorrect based on the evidence on record at the time of our prior decision, and [redacted] letter was not part of that record. 8 C.F.R. § 103.5(a)(3). Furthermore, as explained above, every visa adjudication is based on the individual circumstances of a particular case, and the record does not establish that [redacted] case is comparable to that of the Petitioner. [redacted] assessment of the Petitioner's fame in comparison to herself therefore does not establish that we misapplied any law or policy in our prior decision.

The Petitioner has not met the requirements of a motion to reconsider. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.