



**U.S. Citizenship
and Immigration
Services**

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

In Re: 10299398

Date: JAN. 28, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a tennis club, seeks to classify the Beneficiary, a professional tennis coach, as an alien 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 although the record established that the Beneficiary met the initial evidentiary criteria, it did not show his sustained national or international acclaim or demonstrate that he was among those at the very top of his field of endeavor. The Petitioner then filed a motion to reconsider; the Director dismissed the motion. The Petitioner now appeals the Director's dismissal of the motion.¹

In these proceedings, it is the Petitioner's burden to establish the Beneficiary's eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision on motion and remand for further review of the record and a new decision.

The regulation at 8 C.F.R. § 103.3(a)(1)(i) states that when denying a petition, the Director shall explain in writing the specific reasons for denial. The Director dismissed the motion stating, in part, that the Beneficiary did not establish that the decision was incorrect based upon the evidence of record at the time.

On appeal, the Petitioner points out that the Director issued a one-page decision and did not address any arguments presented by the Petitioner on motion. The Petitioner also notes that the Director stated that "[t]his motion is not accompanied by new evidence." The Petitioner asserts that it was not required to submit new evidence since it filed a motion to reconsider and in accordance with

¹ Appeals filed by representatives must contain a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. 8 C.F.R. § 292.4(a). As we advised the Petitioner in our April 6, 2020 correspondence, the Form G-28 filed on appeal was not properly executed. Accordingly we consider the Petitioner to be self-represented in this matter.

requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3), the Petitioner explained why the decision was based on an incorrect application of law and the evidence of record.

Upon review, we agree that the Director did not provide any analysis or address the Petitioner's arguments on motion to explain why the Director's decision was correct based upon application of law or policy and evidence in the record at the time. When denying a motion, the Director must fully explain the reasons in order to allow the Petitioner a fair opportunity to contest the decision and provide an opportunity for meaningful appellate review. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that the reasons for denying a motion must be clear to allow the affected party a meaningful opportunity to challenge the determination on appeal). Therefore, we are remanding the case to the Director for further review and to sufficiently explain why the motion did not establish that the decision was incorrect.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.