U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19576069

Date: JUNE 13, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a [redacted] coach, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field.

On appeal from that decision, we concluded that the Petitioner had not met the threshold evidentiary requirements. Because the Director had already addressed the issue of sustained national or international acclaim, we also discussed that issue, agreeing with the Director's conclusions on that point. 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 combined motion.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability if:

> (i) the alien 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,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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 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 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 the initial evidence requirements (through either a one-time achievement or meeting three lesser criteria), 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).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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 reopening or 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. ANALYSIS

Before he entered the United States, the Petitioner competed at high levels in Ukraine, Italy, France, and Greece. The [redacted] Athletic Club, d/b/a [redacted] filed a nonimmigrant petition to classify the Petitioner as an O-1A nonimmigrant, and the club hired him as a coach after he arrived in the United States in 2019.

In the October 2020 I-140 petition denial notice, the Director granted three of the Petitioner's claimed initial evidentiary criteria, but concluded, in the final merits determination, that the Petitioner had not shown sustained national or international acclaim. The Director also noted that the Petitioner's most notable career accomplishments were as an athlete, rather than as a coach.

We dismissed the Petitioner's appeal in May 2021, concluding that the Petitioner had not met at least three of the threshold criteria. Because the Director had already undertaken a final merits determination, we also concluded that the Petitioner had not established sustained national or international acclaim either as an athlete or as a coach.

Much of the disputed evidence relates to the Petitioner's career as an athlete, but he seeks employment in the United States as a coach. Guidance from the *USCIS Policy Manual* relates directly to this point:

> Some of the most problematic cases are those in which the beneficiary's sustained national or international acclaim is based on his or her abilities as an athlete, but the beneficiary's intent is to come to the United States and be employed as an athletic coach or manager. Competitive athletics and coaching rely on different sets of skills and in general are not in the same area of expertise. . . .
>
> Therefore, in general, if a beneficiary has clearly achieved recent national or international acclaim as an athlete *and has sustained that acclaim in the field of coaching or managing at a national level*, officers can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that USCIS can conclude that coaching is within the beneficiary's area of expertise.[1]

(Emphasis added.) In this case, the Petitioner competed internationally as recently as 2018. As we noted in our appellate decision, there have been conflicting determinations regarding individual evidentiary criteria at 8 C.F.R. § 204.5(h)(3), and much of the evidence submitted on motion concerns the Petitioner's career as a competitive athlete rather than as a coach. A motion to reopen or reconsider does not entail *de novo* review of the full record, and even if we were to find that the Petitioner had established *past* acclaim as an *athlete*, there would remain the key issue of whether he had *sustained* that acclaim as a *coach*.

We have considered all the evidence and arguments submitted on motion. Nevertheless, given the above facts and policy guidance, the ultimate question is whether the Petitioner has shown that his coaching activity has been at a level consistent with sustained national or international acclaim.[2] For the reasons explained below, we conclude that he has not made such a showing.

A. Motion to Reopen

1. The Petitioner as an Athlete

[1] 6 *USCIS Policy Manual* F.2(A)(2), https://www.uscis.gov/policymanual.

[2] Because acclaim is considered in the context of the final merits determination, determining whether the Petitioner has achieved sustained acclaim as a coach does not require an underlying finding that he meets the underlying evidentiary criteria at 8 C.F.R. § 204.5(h)(3) as a coach.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed that his work as an athlete satisfied seven of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met three of the criteria, relating to prizes or awards; membership in associations; and judging the work of others. In our appellate decision, we concluded that the Petitioner had met only the criterion relating to prizes or awards. On motion, the Petitioner does not dispute the determination relating to original contributions, but maintains that he meets the other six criteria claimed previously.

Upon review of newly-submitted evidence regarding [redacted] national [redacted] team, we conclude that the Petitioner's membership on that team is essentially a qualifying membership under 8 C.F.R. § 204.5(h)(3)(ii). *See* 6 *USCIS Policy Manual* F.2 (appendix), https://www.uscis.gov/policymanual, which indicates that selection for "a national all-star or Olympic team might serve as comparable evidence for evidence of memberships."

In our appellate decision, we acknowledged that an article from www.sport.ua was about the Petitioner, relating to his work in his field, but we concluded that the Petitioner had not shown that the publication is a professional or major trade publication or other major media. Evidence submitted on motion establishes that www.sport.ua is ranked #10 among sports websites in [redacted] This information is sufficient to show that the website is a qualifying publication for purposes of 8 C.F.R. § 204.5(h)(3)(iii).

Because the satisfaction of these three criteria is sufficient for us to proceed to a final merits determination, we need not discuss the Petitioner's evidence and arguments relating to the other three claimed criteria.[3] Nevertheless, as explained above, the Petitioner seeks employment as a coach, rather than as a competitive athlete, and therefore the evidence must show that he has earned acclaim as a coach.

2. The Petitioner as a Coach

In our appellate decision, we discussed the after-the-fact claim (in a letter from 2020) that the Petitioner had briefly served as an assistant coach in 2016-17. We concluded that the Petitioner had not submitted any contemporaneous evidence to confirm that this claimed coaching work took place; its effect on the team's success; or its wider impact on the field overall. We also noted that, during the 2016-2017 season,

the Petitioner was also actively competing, and we concluded that the Petitioner had not established the extent or proportion of his claimed coaching duties.

Newly submitted evidence regarding the [redacted] national [redacted] team does not establish that he coached the team, or that he earned acclaim for doing so.

Other evidence submitted on motion concerns the Petitioner's more recent work with the [redacted] club. Previously, the Petitioner had submitted letters from the club's executive director, which we discussed in our appellate decision. In a new letter (dated February 2021), that same official states that the Petitioner "performs the duties of Head [redacted] coach of the club and Technical Director of the [redacted] Section."

The Petitioner must meet all eligibility requirements at the time of filing the petition. *See* 8 C.F.R. § 103.2(b)(1). At the time of filing in 2019, the Petitioner appears to have had a more limited role at the club. In his first letter, the club's executive director described the Petitioner as a "Master Coach" who served as a lead coach "for many of our programs," rather than for the club as a whole. Furthermore, the Petitioner's apparent promotion within the organization is not inherently a sign of national or international acclaim.

The Petitioner states that the club pays him an annual salary of $50,000, which "is in the highest bracket," whereas "the average annual salary for this position is $40,000." The Petitioner apparently bases these assertions on a newly submitted printout from SimplyHired, pertaining to [redacted] Coach Salaries in Texas." The printout indicates that the average annual salary is $34,216, and $58,895 is at the 90th percentile. But this information does not appear to be directly relevant, because the data apply to all [redacted] coaches, whereas the Petitioner earns $50,000 per year as a *head* coach. The pay differential between a coach and a head coach reflects a head coach's higher authority and greater responsibilities, without necessarily taking acclaim into consideration.

The evidence submitted on motion also includes a printout from ZipRecruiter, indicating that the yearly "Head [redacted] Coach Salary in Texas" ranges from $15,063 to $81,718, and that the "Texas Average" is $52,710. The Petitioner's $50,000 salary is, therefore, slightly below the "Texas Average," and well below the high end of the range.

Even then, the Petitioner was not yet earning $50,000 a year when he filed the petition in 2019. A payroll printout from summer 2019 shows gross payments of $1384.62 every two weeks, which extrapolates to an annual salary of $36,000. The Petitioner has not shown that this level of compensation is reserved for, or indicative of, sustained acclaim in his field.

In one of his earlier letters, the club's executive director stated that one of the club's teams had won "a Silver Medal nationally at the Boys USA [redacted] National Event. . . . We owe this success to the preparation that was given by [the Petitioner]." In our appellate decision, we concluded that the Petitioner did not submit sufficient evidence to substantiate this assertion. The Petitioner's evidence named individual athletes, but did not show that they played for the [redacted] or that the Petitioner had coached them. The Petitioner does not address or resolve this issue on motion. The motion does not include any new evidence concerning the performance of [redacted] athletes or the Petitioner's role in coaching them.

Previously, and again on motion, the Petitioner has submitted published materials regarding, and dating from, his earlier career as a competitive athlete. The Petitioner does not claim that his coaching work has attracted similar notice in either the sports press or more general media. Whatever success and recognition the Petitioner may have achieved as a [redacted] player, his employment with what is claimed to be among the largest youth [redacted] clubs in Texas is not inherently indicative of sustained national or international acclaim.

The Petitioner's motion includes new evidence, establishing that he meets at least three of the threshold evidentiary criteria as an athlete. For the reasons discussed above, however, we conclude that this evidence does not establish proper cause for reopening the proceeding; the new evidence does not show that the Petitioner has established acclaim and recognition as a coach, as required based on his position and for the classification sought. We will, therefore, dismiss the motion.

B. Motion to Reconsider

In our appellate decision, we concluded that the Petitioner had not established "extraordinary ability as a [redacted] athlete, or as a coach." The errors that the Petitioner alleges on motion all concern his earlier work as an athlete. As such, these arguments do not affect the critical question of whether any acclaim he may have earned as an athlete has been sustained and carried forward into his coaching career. Therefore, the Petitioner has not established that our decision on this point was incorrect based on the evidence of record at the time of that decision. As a result, we must dismiss the motion to reconsider. *See* 8 C.F.R. § 103.5(a)(4).

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. We will therefore dismiss the motion to reopen and motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.