U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22697983

Date: SEP. 19, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actor, seeks classification 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 while the Petitioner met the initial evidence requirement for this classification, the record did not establish that he enjoyed sustained national or international acclaim and is one of the very small percentage of actors at the top of the field. We subsequently dismissed his appeal, as well as his previous motion to reconsider. The matter is now before us on a second motion.[1]

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

Section 203(b)(1) of the Act makes visas available to immigrants 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.

[1] The Petitioner checked box 1.a in Part 2 of Form I-290B, indicating that he was filing an appeal. While his accompanying brief refers to this filing as both an appeal and a motion, we will consider this as a motion to reconsider.

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 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).

A motion to reconsider is based on an incorrect application of law or policy to the prior decision. 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

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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

The Director concluded in his most recent decision in this matter that while the Petitioner met three of the evidentiary criteria, he did not establish that he had sustained national or international acclaim through extensive documentation, and that he was among the small percentage at the top of his field. On appeal, we reached the same conclusion, while also refuting the Petitioner's assertion that the Director misinterpreted the Ninth Circuit Court's decision in *Kazarian* as requiring a final merits determination. In our previous motion decision, we explained again that case law and official USCIS policy supported the Director's and our interpretation of *Kazarian*, and explained why the record does not support the Petitioner's eligibility as an individual of extraordinary ability.

On motion, the Petitioner repeats his previous arguments regarding the requirement of a final merits determination, and does not challenge our previous conclusions regarding the merits of his petition. As we stated in our two most recent decisions, the Petitioner's reasoning ignores plain language in the *Kazarian* decision and is not supported by relevant caselaw. Further, the publicly available USCIS Policy Manual plainly states that if an individual shows that they either meet three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) or have a one-time achievement, they must then establish that they possess the requisite sustained national or international acclaim and are one of the small percentage at

the top of their field.[2] Accordingly, the Petitioner has not demonstrated that our previous motion decision was based upon an incorrect application of law or policy.

ORDER: The motion is dismissed.

[2] 6 USCIS Policy Manual F.2(B)(2), https://www.uscis.gov/policy-manual.