U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19713820

Date: SEPT. 19, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a martial arts athlete, 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 Petitioner did not establish, as required, that he had received a major, internationally recognized award, or, in the alternative, met at least three of the ten initial evidentiary criteria for this classification. We dismissed the Petitioner's appeal, and three subsequent combined motions to reopen and to reconsider.

The matter is now before us on a fourth combined motion to reopen and reconsider. On motion, the Petitioner submits new evidence regarding his recent activities and his social media presence.

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 motion.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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).

II. MOTION REQUIREMENTS

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).

III. ANALYSIS

The issue before us is whether the Petitioner has submitted new facts to warrant reopening the proceeding, or established that our decision to dismiss his third motion to reopen and reconsider was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy.

A. Procedural History

The Petitioner holds a [redacted] black belt in the [redacted] style of karate, having competed at various levels since 2002. The Petitioner joined [redacted] national karate team in 2012, and claimed to still be a member of that team in 2018 although he had been in the United States since November 2017 as a B-1 visitor. He is vice president and head coach at [redacted] Karate Academy in [redacted] California.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he had received a major, internationally recognized award, or, in the alternative, that he satisfied at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(v)(i)-(x). Specifically, the Director found that he met none of those criteria. After a *de novo* review of the record, we reached the same conclusions and dismissed the Petitioner's appeal in May 2019.

The Petitioner then filed three combined motions to reopen and to reconsider. We dismissed these combined motions, in April 2020, November 2020, and May 2021, respectively. The matter is now before us on a fourth combined motion to reopen and to reconsider.

B. Motion to Reconsider

In order to warrant reconsideration, the Petitioner must establish that our decision to dismiss his previous combined motion to reopen and reconsider was based on an incorrect application of law or USCIS policy and was incorrect at the time of that decision. 8 C.F.R. § 103.5)(a)(3).

The statement accompanying the Petitioner's latest motion does not meet this requirement. The Petitioner does not identify any incorrect application of law or USCIS policy in our May 2021 decision, or make any specific claim that our May 2021 decision was incorrect based on the evidence in the record at the time of that decision. Instead, the Petitioner describes newly submitted evidence. The new evidence submitted on motion was not in the record for us to consider at the time of the previous decision. We consider this new evidence in the context of a motion to reopen, below.

The motion does not meet the requirements of a motion to reconsider, and therefore the regulation at 8 C.F.R. § 103.5(a)(4) requires us to dismiss the motion.

C. Motion to Reopen

A motion to reopen must establish new facts. 8 C.F.R. § 103.5(a)(2). Nevertheless, not every new fact warrants reopening of the proceeding. The Petitioner must establish that he meets all eligibility requirements as of the date of filing, and continuing through the adjudication of the petition. 8 C.F.R. § 102.3(b)(1). Therefore, consistent with this proceeding, the Petitioner's new evidence must establish that he was eligible for the classification sought when he filed the petition in May 2018, and remains eligible now.

On motion, the Petitioner states:

> In support of the Motion I am submitting evidence of my status as a verified person on the Facebook and the documentation from the Facebook showing the criteria used to select and/or identify the individual as a "verified person." I am also submitting evidence of the number of followers I have on the Facebook and Instagram.

Previous decisions had not discussed the Petitioner's Facebook page, and the Petitioner does not explain why his "verified" status establishes that he is an individual of extraordinary ability. A submitted printout from Facebook indicates that a verified page must "[r]epresent a well-known, often

searched person, brand or entity." The printout does not elaborate as to the minimum requirements to meet these vague and general standards.

The Petitioner establishes how many followers he has on Facebook and Instagram, but he does not provide any context for those numbers. For instance, he does not provide figures for other athletes in his sport, to show that he has significantly more followers than most others in his field. With no basis for comparison, the figures provided by the Petitioner do not establish extraordinary ability.

The printouts also do not show when Facebook awarded the verification badge to the Petitioner's page. Therefore, even if the Petitioner had shown the badge to be strong evidence of eligibility, he has not demonstrated that his page had such a badge when he filed the petition in May 2018. Likewise, the Petitioner does not show how many followers he had at the time of filing.

Because the Petitioner has not established the relevance of the Facebook verification badge and social media printouts, he has not shown that their submission shows proper cause for reopening the proceeding.

The Petitioner also states:

> I am also submitting documentation to show that my previous achievements as a professional athlete earned me and continue to earn the reputation of the professional athlete and now a coach and that my expertise in the field and performance techniques are well-recognized here in the United States.

The Petitioner does not further elaborate as to the nature of this documentation or how it establishes his eligibility. Apart from Facebook printouts, the new materials on appeal consist of the following:

- Two letters, from [redacted] 2021, describing the Petitioner's activities as a coach and competitor at a [redacted] championship in [redacted] in [redacted] 2021 and his subsequent work with some of the athletes there;
- Fourteen undated photographs of the Petitioner, sometimes alone and sometimes with other athletes, some of whom appear to be students of the karate academy where he now works;
- A certificate from the U.S. Center for Safesport, indicating that the Petitioner completed a training program in June 2021; and
- Three social media posts from [redacted] showing photographs from the Petitioner's visit to [redacted]

One of the new letters is from the founder and president of the [redacted] Karate Academy, where the Petitioner is vice president and head coach. The letter describes events that took place after the petition's filing date in May 2018; the Academy was founded in 2019. The other new letter is from an individual who does not state any title, but who indicates that he is a franchisee of [redacted] and who recruited the Petitioner to act as head coach at the regional event in [redacted] mentioned above. The letter indicated that the Petitioner pursued Safesport certification in order to coach "5 of [the writer's] daughters in the [redacted] National Championships and team trials."

As explained above, events that took place after May 2018 cannot establish that the Petitioner was eligible when he filed the petition. Because the Petitioner has not shown that he was eligible at the time of filing, consideration of newer evidence regarding his activities in 2021, such as his Safesport training, cannot suffice to show eligibility. The Petitioner has also not shown that his continued involvement in regional-level competitions establishes that he meets the very high eligibility requirements for classification as an individual of extraordinary ability.

The new evidence does not establish relevant new facts, and therefore does not constitute proper cause for reopening the proceeding. We will dismiss the motion to reopen because it does not meet the requirements for such a motion.

IV. CONCLUSION

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 prior motion. 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.