U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25233092

Date: FEB. 21, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, an actor, seeks classification as an individual of extraordinary ability in the arts. *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 initially denied the petition, concluding that the Petitioner did not meet any of the claimed criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Following an appeal, we remanded the case to the Director for entry of a new decision. The Director determined that, while the Petitioner met the initial evidence requirement for this classification, the record did not establish that he achieved sustained national or international acclaim and is one of the very small percentage of actors at the top of the field. The Petitioner appealed the new decision and we dismissed that appeal. We also dismissed two subsequent motions to reconsider. The matter is now before us on a third motion to reconsider.[1]

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

I. LAW

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.

[1] The Petitioner checked box 1.a in Part 2 of Form I-290B, Notice of Appeal or Motion, indicating that he was filing an appeal. However, because his brief refers to his filing as a motion to reconsider our previous motion decision, 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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 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).

II. ANALYSIS

The Director concluded in his most recent decision in this matter that while the Petitioner met three of the ten evidentiary criteria, he did not establish that he had sustained national or international acclaim through extensive documentation, nor did he establish that he was among the small percentage at the top of his field. On appeal, we reached the same conclusion; we also refuted the Petitioner's assertion that the Director misinterpreted the Ninth Circuit's decision in *Kazarian* as requiring a final merits determination. In our initial motion decision, we explained again that case law and official U.S. Citizenship and Immigration Services (USCIS) policy supported the Director's and our interpretation of *Kazarian*, and we explained why the record does not establish that the Petitioner qualifies as an individual of extraordinary ability. In our subsequent motion decision, we explained that the Petitioner's reasoning ignores plain language in the *Kazarian* decision and is not supported by relevant caselaw; we further explained that 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]

On motion, the Petitioner does not challenge our previous conclusions regarding the merits of his petition. The Petitioner submits copies of court cases from 1994, 1995, and 2008, as well as non-precedent appellate decisions[3] from 2004 and 2007, for individual petitions that were found to qualify

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

[3] We note that these decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and as noted above, applicable law and policy.

for the extraordinary ability classification. Those petitions were found eligible for the classification because it was determined that certain evidence presented to support the petitions was either mischaracterized or ignored. However, those cases were decided under previous adjudicative policy guidance that is not applicable to the present case. Further, those cases were decided prior to the 2010 *Kazarian* decision. In the present case, we fully reviewed the evidence of record and rendered our previous motion decision based on that evidence in accordance with applicable laws, regulations, and USCIS policy.

The Petitioner has not demonstrated that our previous motion decision was based upon an incorrect application of law or policy. Therefore, we will dismiss the motion to reconsider.

ORDER: The motion to reconsider is dismissed.