U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27463551

Date: JUNE 15, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a figure skating coach, seeks classification as an individual of extraordinary ability in athletics. *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 that she had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion to reopen, the Petitioner submits a copy of a January 2022 article from *Zippia*, "Can I coach without a degree?," which reads, in part: "Yes, you can coach without a degree. While you will not be teaching at a school, you can coach non-school-related sports and other lifestyle activities. There are many different types of professional coaches, from sports to life to career coaches — most of which you can do without a college degree." Citing this information, the Petitioner states:

> [The Petitioner] has obtained a coaching position at a sports school that . . . requires a professional diploma in physical education in addition to skating abilities. Therefore, [the Petitioner] is part of the small percentage of figure skating coaches who possess a professional diploma in physical education, as not all figure skating coaches have

obtained such a diploma. According to the International Skating Union's coaching requirements, only about 10% of figure skating coaches hold a professional diploma in physical education.

The above information places the Petitioner in a minority among skating coaches, but a relevant academic degree does not fulfill any of the ten initial criteria at 8 C.F.R. § 204.5(h)(3), and it does not place degree holders among a "small percentage who have risen to the very top of the field of endeavor" as required by 8 C.F.R. § 204.5(h)(2). The *Zippia* article lacks an author's attribution, and *Zippia* appears to be a website specializing in career information and advice, rather than figure skating or athletic coaching. The article indicates that coaching jobs "at a school" *do* require a degree. Therefore, among skating coaches at schools, the Petitioner's degree appears to amount to a required credential rather than an indicator of extraordinary ability or sustained acclaim.

The printout from *Zippia* does not provide new facts that would support a determination of eligibility for the benefit the Petitioner seeks. Therefore, the printout does not show proper cause for reopening the proceeding.

We now turn to the second document submitted on motion. The Petitioner's initial submission included a translated letter from the executive director of the Figure Skating Federation of the [redacted] After the Petitioner submitted that letter, the Director informed the Petitioner, in a request for evidence (RFE), that the translator's certification was deficient. The Director listed the requirements for such certification, found at 8 C.F.R. § 103.2(b)(3). The Petitioner's response to the RFE included compliant certifications for newly submitted documents, but not for the previously submitted translations.

In our decision dismissing the appeal, we stated that the lack of compliant certifications reduced the evidentiary weight of the affected translations. The Petitioner now submits a new translation certificate for the letter from the [redacted] The Director's RFE afforded the Petitioner the opportunity to address the deficiency in the translation certification. The Petitioner did not overcome the deficiency at that time. The submission of the new certification at this late date does not show proper cause to reopen the proceeding. When a petitioner responds to an RFE, all requested materials must be submitted together at one time. Submission of only some of the requested evidence will be considered a request for a decision on the record. 8 C.F.R. § 103.2(b)(11). *Cf. Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (holding that evidence will not be considered on appeal when the affected party was previously put on notice of required evidence and given a reasonable opportunity to provide it). We will further discuss the information in the [redacted] letter below, in the context of the motion to reconsider.

Because the new materials submitted on motion do not show proper cause for reopening, we will dismiss the motion to reopen.

We will now address the motion to reconsider. In our appellate decision, we stated: "The Petitioner has performed as a figure skating competitor and intends to work as a coach and choreographer for figure skaters. She attained her foreign bachelor's degree in physical education and began coaching one year after receiving her degree." On motion, the Petitioner asserts that the above "statement is not entirely accurate," because the Petitioner "has over 10 years of coaching experience, which she began

immediately after her figure skating career. Additionally, she has provided her resume in the initial filing, which likely includes her coaching experience." The quoted passage from our appellate decision was a brief summary of the Petitioner's career, rather than a basis for dismissal of the appeal. Neither the length of the Petitioner's experience nor the timing of her degree are relevant criteria under 8 C.F.R. § 204.5(h)(3), nor do they inherently demonstrate sustained national or international acclaim as required by section 203(b)(1)(A)(i) of the Act.

As noted in our prior decision, the regulation at 8 C.F.R. § 204.5(h)(3) sets forth ten criteria, listing types of evidence that could, subject to a final merits determination, help to establish extraordinary ability. The Petitioner initially claimed to have satisfied seven of these criteria. We agreed with the Director that the Petitioner had satisfied only one of them, relating to judging the work of others.

On motion, the Petitioner addresses two of the regulatory criteria, discussed below.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

In the denial notice, the Director acknowledged the Petitioner's membership in the [redacted] but concluded that the Petitioner had not shown that the membership meets the regulatory requirements:

> The evidence did not show that the memberships require outstanding achievements, as judged by recognized national or international experts. The beneficiary, for example, did not provide the bylaws or other membership requirements to show that outstanding achievements are a condition of membership, and that the judging of membership is comprised of recognized national or international experts. Here, the beneficiary's evidence is insufficient to meet the regulatory requirements of this criterion.

On appeal, the Petitioner asserted that she had established the reputations of the [redacted] Presidium members who judge candidates for membership, and that she had established the importance of her activities. In dismissing the appeal, we concluded that the Petitioner did "not remedy the lack of material relating to membership requirements."

On motion, as noted above, the Petitioner resubmits a letter from the executive director of the [redacted], with a new translation certification. The Petitioner does not, however, establish that we erred in our prior decision. The letter states that membership "requires outstanding achievements evaluated by recognized national or international experts," and that the [redacted] accepted the Petitioner into membership "by a general, unanimous decision of all 7 members of the Presidium of the Federation present." The [redacted] is a regional association, rather than a national or international one, and the Petitioner does not establish that Presidium membership requires recognition beyond the local vicinity of [redacted]. Also, the letter does not cite to any bylaws or other primary evidence to corroborate the assertion that the [redacted] requires outstanding achievement as a condition for admission to membership. The minutes of the July 2020 Presidium meeting, also in the Petitioner's initial submission, indicate that three individuals were denied membership because of insufficient information concerning their "activities in the [redacted]." The document does not say what sort of "activities" are necessary to qualify for membership.

The Petitioner has not shown that we erred in concluding that she had not satisfied this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner claimed to satisfy this criterion because she wrote an article in championat.com with the translated title "Why should you start skating? 7 good reasons from the coach." In the denial notice, the Director noted the lack of a complete English translation, and stated that the Petitioner had not established "that championat.com qualifies as a professional or major trade publication or some other form of major media." In our dismissal of the appeal, we stated:

> As the Petitioner operates outside of academia, she should demonstrate the article was written for learned persons in the field. The article does not meet this requirement as it appears intended for those who do not compete in her athletic field, and she offers no arguments to the contrary. As the Petitioner has not shown this evidence qualifies as a scholarly article, it would serve no purpose to evaluate whether it appeared in a qualifying publication.

On motion, the Petitioner argues that she has established that championat.com is a major publication. As we observed in our decision, we need not consider that question until the Petitioner establishes that her article is scholarly. Outside of academia, we consider a "scholarly article" to be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. *See generally* 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual.

The Petitioner asserts, on motion:

> The article in question is composed of 7 distinct sections that highlight the physical education benefits of figure skating. It should be noted that these sections are not based on abstract observations or solely on [the Petitioner's] personal opinion, but rather reflect the profound knowledge and expertise that she has gained through her experiences in the field, as well as her formal education in Physical Education at the university level.

The definition of a scholarly publication rests on the knowledge and expertise of the intended readers, rather than that of the author. The Petitioner has not shown that her article is a scholarly effort aimed at such readers. Rather, the translated introductory fragment of the article reads, in part: "Like any physical activity, ice skating develops and strengthens muscles that are not involved in everyday life. And also, of course, burns calories. But that's not all. I will tell you about seven reasons that will convince you to get up on skates this winter." The Petitioner had previously submitted a letter from another figure skater, who stated that the purpose of the article was to "make a non-skater start to learn to skate."

The Petitioner has not established that she wrote a scholarly article for a specialized readership, as opposed to a popular article for a general readership. Therefore, she has not shown proper cause for reconsideration.

Beyond the above arguments, the Petitioner states that she has no desire to return to her native Russia, due to factors such as her disagreement with that country's war with Ukraine. We do not question the depth or sincerity of the Petitioner's beliefs in this regard, but the classification she seeks in this proceeding is contingent on sustained national and international acclaim, which she has not established.

In our prior decision, we granted one of the ten criteria at 8 C.F.R. § 204.5(h)(3), and reserved discussion on two others. If the Petitioner had satisfied both of the reserved criteria, then the discussion would have proceeded to a final merits determination, but such a determination would not have resulted in approval of the petition. The Petitioner's evidence shows that she is a knowledgeable and experienced skater and coach, but the record does not show that she has attained sustained national or international acclaim as required by section 203(b)(1)(A)(i) of the Act, and it does not show that she has risen to the very top of her field as required by 8 C.F.R. § 204.5(h)(2).

Nevertheless, we will briefly discuss here one of the two reserved criteria, to show that we and the Director did not err by omitting the final merits determination.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

Initially, the Petitioner claimed several instances of published material. In response to the RFE, however, she narrowed her claim to an appearance on *Utro Rossii* on the Russia 1 television network. The Director concluded that the Petitioner had not established that she had appeared in professional or major trade publications or other major media. On appeal, the Petitioner asserted that she had previously submitted evidence showing that Russia 1 is a major television channel in Russia.

The published material should be about the person. The person and the person's work need not be the only subject of the material, but the material should include a substantial discussion of the person's work in the field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. The translated transcript does not indicate that the television segment on Russia 1 was about the Petitioner, relating to her work in the field. Rather, the transcript indicates that the focus of the piece was children learning to skate. The piece included footage of the Petitioner teaching a group of children, and talking to a reporter about changing attitudes in the field. The Petitioner briefly appeared in this television segment, but it is not about her and her work in the field. Rather, she appears to have been shown as a representative example of a skating teacher, while the reporter discussed general statistics and information rather than the Petitioner's career or recognition.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.