U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25820197

Date: MAY 11, 2023

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 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 the Petitioner did not establish 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 four subsequent combined motions to reopen and reconsider. The matter is now before us on a fifth combined motion to reopen and reconsider. On motion, the Petitioner submits 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 combined motion to reopen and reconsider.

I. LAW

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 (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant 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

The issue before us is whether the Petitioner has submitted new facts to warrant reopening or has established that our decision to dismiss the prior combined motion was based on an incorrect application of law or USCIS policy. We incorporate all our prior decisions by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on fifth motion. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

A. 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. See 8 C.F.R. § 103.5)(a)(3).

The Petitioner states on fifth motion that he is "submitting evidence of my achievements as an athlete and as a coach; letters from reputable organizations in the field of martial arts; evidence of recognition of my unique style and presence on the worldwide web; pictures at the various competitions where I participated as an athlete and as a coach." This statement does not identify any incorrect application of law or USCIS policy in our September 2022 decision nor does it contain any specific claim that our September 2022 decision was incorrect based on the evidence in the record at the time of that decision.

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.

B. Motion to Reopen

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. INS v. Doherty, 502 U.S. 314, 323, (1992) (citing INS v. Abudu, 485 U.S. 94, 108 (1988)); see also Selimi v. Ashcroft, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. INS v. Abudu, 485 at 107.

Based on its discretion, USCIS "has some latitude in deciding when to reopen a case" and "should have the right to be restrictive." Id. at 108. Granting motions too freely could permit endless delay when foreign nationals continuously produce new facts to establish eligibility, which could result in needlessly wasting time attending to filing requests. See generally INS v. Abudu, 485 U.S. at 108. The new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992); see also Maatougui v. Holder, 738 F.3d 1230, 1239–40 (10th Cir. 2013). Therefore, a party seeking to reopen a proceeding bears a "heavy burden." INS v. Abudu, 485 at 110. With the current motion, the Petitioner has not met that burden.

The Petitioner's evidence on motion may be summarized as follows:

- 2022 letter from a martial arts coach describing the Petitioner's activities as a coach and his participation in 2021 and 2022 tournaments and competitions;
- Screenshots of undated social media photos and posts featuring a person we presume to be the Petitioner performing various martial arts poses and other social media users commenting on them;
- Unsigned 2022 letter on [redacted] letterhead, stating how they met the Petitioner and follow him on social media;
- December 2022 letter from a martial arts coach praising the Petitioner and stating that he met the Petitioner in 2015;
- December 2022 letters from two mothers whose children the Petitioner coaches;
- Photos of children wearing medals or holding certificates and standing near a person we presume to be the Petitioner;
- Advertisements for upcoming competitions listing the Petitioner as a competitor;
- Photos of a person we presume to be the Petitioner at 2021 and 2022 martial arts competitions in the United States;
- Information on how to register or attend martial arts competitions;
- Lists of people who won medals at a 2015 European Universities Karate Championship;
- Copy of 2021 [redacted] competition results, listing the Petitioner as winning third place in one category and accompanied by photos; and
- Copy of 2021 USA Karate Nationals results, listing athletes the Petitioner may have coached and accompanied by photos.

The Petitioner has submitted this same type of evidence in his previous motions and appeal, and we have thoroughly addressed the reasons it does not establish eligibility for the requested classification.[1] As such, this evidence is not new and does not meet the requirements of a motion to reopen. In addition, the Petitioner's description of the evidence, as quoted above in relation to the Petitioner's motion to reconsider, does not identify the criteria under which we should consider this evidence. The Petitioner has not explained (1) the relevance of this evidence to his eligibility as an individual of extraordinary ability, or (2) how it establishes eligibility at the time of filing. Accordingly, even if these were new facts and evidence, they would not warrant reopening the proceedings.

The Petitioner has not shown proper cause for reopening the proceedings. Therefore, the motion to reopen must be dismissed.

[1] Some of this evidence appears to relate to the Petitioner as a coach and not as an athlete who performs the sport. The Petitioner has not offered sufficient explanation or evidence to demonstrate that his coaching children in martial arts relates to his ability as martial arts athlete. Although a competitive athlete and a coach may both share knowledge of the sport, we draw a distinction between the skills required for each. See, e.g., Integrity Gymnastics & Pure Power Cheerleading, LLC v. USCIS, 131 F.Supp.3d 721 (S.D. Ohio 2015) (noting that "competitive athletics and coaching are not the same area of expertise" and citing Lee v. I.N.S., 237 F.Supp.2d 914 (N.D. Ill. 2002) in support). As such, the Petitioner's evidence that he coaches a martial art does not necessarily support a finding of extraordinary ability for his athletic performance in that martial art. In addition, as we have explained in our prior decisions, much of the Petitioner's coaching activities occurred after the initial filing of the petition and cannot establish eligibility at the time of filing. Although we have considered it, for the foregoing reasons, we do not directly address the Petitioner's coaching evidence or find that it establishes eligibility under the requested classification.

III. CONCLUSION

For the reasons discussed, the evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision, and the Petitioner's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or USCIS policy. Therefore, the combined motion to reopen and reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.