U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28803298

Date: NOV. 29, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a professional baseball player, 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 and we dismissed the subsequent appeal, concluding that the record did not establish the Petitioner met the initial evidentiary requirements through evidence of a one-time achievement or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on motion to reconsider. 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 to reconsider.

I. LAW

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 reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit 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

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner established that our decision to dismiss the prior appeal was

based on an incorrect application of law or USCIS policy. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

Although the Petitioner asserted that he meets four of the criteria listed at 8 C.F.R. § 204.5(h)(3), we determined he established eligibility under only two criteria. Our prior decision explained that he had not established eligibility under the criteria related to membership in associations requiring outstanding achievements of their members and published material about the Petitioner in major media. On motion, the Petitioner contends that we erred in our analysis and determination under these two criteria.

A. Membership

Regarding the Petitioner's membership in associations that require outstanding achievements of its members under 8 C.F.R. § 204.5(h)(3)(ii), we explained the Petitioner had not established that LIDOM and MLB require outstanding achievements of its members; that the Petitioner individually, as opposed to his team, is a member of the associations; or that recognized experts in the field judged the Petitioner's achievements.

The Petitioner provided information on how LIDOM and MLB select teams for membership, but this does not establish that LIDOM or MLB selected the Petitioner for membership.[1] Moreover, the evidence does not sufficiently demonstrate how the team's managers and operation staff specifically selected the Petitioner as a player, which of his achievements they considered, or how the achievements were determined to be outstanding. On motion, Counsel states that "although neither the MLB's, nor the LIDOM's bylaws specify the qualifications of their reviewers, each requires outstanding achievements of its members which are judged by experts." As we explained in our prior decision, it is a petitioner's burden to demonstrate every element of a given criterion. Counsel's unsubstantiated assertions do not constitute evidence. See, e.g., Matter of S-M-, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

The Petitioner emphasizes, "the most outstanding players can enter the annual draft" for the teams that comprise LIDOM and that these players "must have a performance that stands out above the rest. They must demonstrate extraordinary talent and discipline." The Petitioner appears to suggest that the term "outstanding player" means that a player has outstanding achievements or that "standing out above the rest" and having "extraordinary talent and discipline" substantiates a finding of outstanding achievement. However, we conclude that these descriptions are too nebulous to determine what the selection requirements are for players generally or for the Petitioner specifically. We find no error in our prior determination that the evidence does not demonstrate the selection requirements for the players on the Petitioner's team or how the requirements constitute "outstanding achievements."

Our prior decision distinguished between a team's membership in the MLB and an individual player's membership in the MLB. We further explained the record did not demonstrate that being a member of the Petitioner's team required outstanding achievements, but rather, skills and discipline. On

[1] As our decision states, the team's managers and operation staff selected the Petitioner to be a part of their team.

motion, the Petitioner refers our attention to the portion of [redacted] letter that states, "[o]nly those who can show outstanding achievements can be a member of an MLB team." The Petitioner contends that this language establishes his eligibility under this criterion and that we erred in not considering it in our prior decision. However, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), aff'd, 905 F. 2d 41 (2d. Cir. 1990); Avyr Associates, Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. 1756, Inc. v. The Attorney General of the United States, 745 F. Supp. 9, 15 (D.C. Dist. 1990). While we acknowledge [redacted] words, simply stating that players have outstanding achievements is not sufficient to establish which of the Petitioner's achievements were considered and how they were determined to be outstanding such that it establishes his eligibility under this criterion.

B. Published Material

Regarding published material about the Petitioner in major media under criterion 8 C.F.R. § 204.5(h)(3)(iii), our decision explained that many of the submitted articles do not include the author or date of the material, thereby not meeting the plain language of the criterion. On motion, the Petitioner asserts that editorial boards or groups of staff writers often author the material and that simply because an article lacks a specific author name, does not mean the article is unsigned. Specifically, the Petitioner points out that when an article expresses the opinion of multiple writers or the media outlet as a whole, such articles may be signed with only the name of the media or as "editorial." We acknowledge the nature of collective opinions and collaborative writing; however, under the regulation, providing the author and the date is not optional. Furthermore, the Petitioner did not provide information about who among the media outlets' staff wrote the submitted articles such that we could determine how they would be considered authored articles. For instance, the materials from El Nacional (5/30/21), Diario Libre (5/28/21) and Almedio.net (5/30/21) contain no author or reference to editorial or staff writers, nor does the record contain sufficient information about any specific writers working for these media outlets.

The Petitioner contends that our prior decision did not sufficiently consider some of the published materials that contain all of the regulatory elements. The Petitioner references the El Dia article by [redacted] dated [redacted] 2022. However, our prior decision specifically referenced this article and explained that it is not about the Petitioner. Therefore, as explained, this article does not establish the Petitioner's eligibility under this requirement.

The Petitioner provided numerous Twitter screenshots as examples of material published about the Petitioner and containing all regulatory elements. Some of the tweet screenshots contain dates, while others do not. Most of the tweets do not contain the name of the author, but rather only the account under which they were posted. As such, it is not apparent how these examples meet all elements of the regulatory criteria. For many Twitter accounts, such as [redacted] the Petitioner has not submitted evidence to establish how they constitute major media.[2] In addition and as we

[2] We acknowledge the Petitioner asserts Twitter is the major medium in which the materials are published; however,

previously explained, the tweets mention the Petitioner, but the material, which is one to three sentences in length, is about the team or its performance. In many cases, the tweets originate from a baseball team's Twitter account, which further reinforces the notion that a tweet's mention of the Petitioner is a detail incidental to the team or its performance as a whole.

Regarding the YouTube videos, the Petitioner asserts that each contains a date, such as "1 year ago," "7 months ago," and "five years ago;" however, this only provides a reference point to when a viewer navigated to the video to print a screenshot of it in relation to when a user posted the video. We do not consider this time reference to be a date. Further, we do not know what the videos are about because we do not have the transcripts for any of them. Therefore, the YouTube videos do not establish eligibility under this criterion.[3] We find no error in our prior determination that still images, unaccompanied by transcripts, are not sufficient to show that the Petitioner's appearances amount to published material about him, relating to his work.

For the foregoing reasons, the Petitioner has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

ORDER: The motion to reconsider is dismissed.

Twitter appears more akin to the format in which the material is captured, e.g. book, magazine, newspaper, television, radio, podcast, social network, blog spot, etc., particularly as the self-created Twitter accounts and their users disseminate the information to the public rather than the corporation itself, Twitter, Inc. or X Corp., posting or preapproving the content.

[3] The Petitioner contends that neither the regulations nor the policy manual requires transcripts of the videos; however, he has not established how screenshots of videos without transcripts have any probative value under this criterion. While a transcript is not a regulatory requirement, the regulation states, "evidence shall include . . . any necessary translation (emphasis added). 8 CFR 204.5(h)(3)(iii).