U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35413613

Date: DEC. 17, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a martial artist, seeks classification as an individual of extraordinary ability. 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 Texas Service Center denied the petition in November 2018, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal and nine subsequent motions. The matter is now before us on a combined motion 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 motion.

I. LAW

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 sustained acclaim and the 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 categories 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 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).

Further, a motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider

are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). In addition, our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). 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).

II. ANALYSIS

A. Motion to Reconsider

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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner restates and describes the evidence he submitted under the evidentiary criteria relating to awards, judging, and leading or critical role.[1] However, the Petitioner does not argue or point to how we incorrectly applied law or policy in our prior decision, as required for a motion to reconsider. Disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Here, the Petitioner did not demonstrate that we erred in either misapplying law or policy or failing to address prior arguments or evidence. For these reasons, we will dismiss his motion to reconsider.

B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). For the first time on motion the Petitioner argues that he satisfies the initial evidentiary requirements through evidence of a qualifying one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3), based upon the same awards he submitted as lesser nationally or internationally recognized awards at 8 C.F.R. § 204.5(h)(3)(i). The regulation at 8 C.F.R. § 204.5(h)(3) states that a petitioner may submit evidence of a one-time achievement that is a major, internationally recognized award.

As noted in our appellate decision, and affirmed in our most recent motion decision, the record reflects that the Petitioner has received numerous awards in the field of kickboxing, such as:

- First place at the 2013 [redacted] Cup in the 86 kg category;
- Second place at the 2014 [redacted] Championship held in [redacted]
- Second place at the 2016 [redacted] Championship;
- First place in the 70 kg weight category at the [redacted] Tournament [redacted] and
- First place in the 72.5 kg weight category at the [redacted] Cup of Kickboxing.

[1] The Petitioner's motion to reconsider does not address our decision regarding the published material criterion.

While documentation provided from the [redacted] General Rules Chapter 1" and the [redacted] Official Amateur Rulebook detailed the general criteria for the awards the Petitioner received, they did not demonstrate the national or international significance of the awards won. Nor did the record contain other evidence establishing that these awards are nationally or internationally recognized for excellence in the field of martial arts as required for the lesser awards criterion at 8 C.F.R. § 204.5(h)(3)(i). The Petitioner's current motion does not address our prior determination regarding this criterion.

Instead, the Petitioner argues an Olympic medal should not be the only example of a qualifying one-time achievement in athletics. He states that "Muaythai sport was not presented in Olympic Games yet as a competitive sport which means World Championship is the highest level of competition that athlete could attend." He asserts that "[b]eing awarded second place in World Championship in [redacted] 2016 in [redacted] is established that I had a major, internationally recognized award." Although the record indicates that Muay Thai is not an Olympic sport, here the Petitioner has not substantiated his arguments with independent evidence that any of the competitions in which he medaled represent the highest level of international competition in Muay Thai.

In addition, the regulation at 8 C.F.R. § 204.5(h)(3) provides that "[s]uch evidence shall include evidence of a one-time achievement (that is, a major internal[ly] recognized award)." While the regulation does not identify any qualifying award, the House Report specifically cited to the Nobel Prize as an example of a one-time achievement. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. We have consistently recognized other examples of a one-time achievement including the Pulitzer Prize, an Academy Award, and an Olympic medal. Further, we must look to Congress' intent that "admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor." *Id.* Thus, consistent with legislative history, a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards.

We note that the selection of Nobel Laureates, the example provided by Congress indicated above, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized, not just acknowledged within the field as its highest award. The Petitioner has not presented evidence, for example, establishing that the above competitions or awards are widely reported by international media, are recognized by the general public, or garner attention comparable to other major, globally recognized awards such as Olympic medal winners.

Therefore, the Petitioner did not establish that his receipt of any of the above awards qualifies as a one-time achievement. Even if the Petitioner had demonstrated that he had been awarded the top award in his field, which he has not, we are not persuaded that the top award in any field qualifies as a one-time achievement. The fact that a major, internationally recognized award, such as an Olympic Medal, may not exist in a specific field does not mean that we should diminish the impressive nature of the one-time achievement and accept a lesser award. In cases where one cannot obtain a one-time achievement, including instances where it is not available in a field, they "can also qualify on the basis

of a career of acclaimed work in the field" by satisfying three of the ten categories of evidence. *See* H.R. Rep. at 59 and 8 C.F.R. § 204.5(h)(3).

Next, for the first time on motion the Petitioner also argues that he satisfies the membership criterion based on his claim to having "served on Ukrainian national sports team in several World Championships and European Tournament" and his "recognition as a Master of Sports of Ukraine." However, none of his arguments offered on motion meet the requirements of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii).[2] For example, although the documentation submitted indicates that the Petitioner has competed as a member of Fight Club [redacted] and [redacted] Martial Arts Club [redacted] it does not provide any documentation of these clubs' official membership requirements or selection processes. In addition, the Petitioner does not explain how "recognition as a Master of Sports of Ukraine" constitutes evidence of association memberships, nor does the record contain evidence indicating that this or other achievements were requirements or led directly to his selection to the above clubs. Without evidence indicating that the Petitioner is a member of an association requiring outstanding achievements and that admission to membership is judged by recognized national or international experts, the Petitioner has not established that he meets the requirements of the membership criterion.

The arguments on motion to reopen do not overcome our prior findings and demonstrate the Petitioner's eligibility. The Petitioner has not satisfied 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). Nor has the Petitioner provided new facts to establish that we erred in dismissing the appeal. For these reasons, we will dismiss his motion to reopen.

III. CONCLUSION

The Petitioner has not demonstrated, as supported with any pertinent precedent decisions, that our prior decision was incorrect based on the evidence in the record at the time of our decision to satisfy the requirements for a motion to reconsider. He has also not provided new facts supported by affidavits or other documentary evidence to meet the requirements for a motion to reopen. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen dismissed.

[2] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.