U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31523849

Date: JUL. 3, 2024

Motion on Administrative Appeals Office Decision

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

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish her qualification as an individual of extraordinary ability. 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 motion.

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). 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.

The Director determined the Petitioner satisfied only one (display under 8 C.F.R. § 204.5(h)(3)(vii)) of the eight claimed categories of evidence. In our decision, we adopted and affirmed the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). Moreover, we indicated the Petitioner only challenged six of those criteria and explained why she did satisfy any of them, including her failure to explain and support her assertions of the Director applying the wrong standard and not supporting his conclusions, her failure to address the evidentiary deficiencies identified by the Director, and her failure to provide independent, objective evidence to support counsel's assertions.

On motion, the Petitioner challenges our decision relating to three of the criteria. Regarding the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner references the bylaws for the Theater Union of Moldova (UNITEM) and claims that "[i]t is reasonable to conclude that the

association is professional." Here, the Petitioner does not provide new facts, supported by documentary evidence, as required for a motion to reopen under 8 C.F.R. § 103.5(a)(2). Instead, the Petitioner cites to previously submitted bylaws. Moreover, the Petitioner does not demonstrate how we incorrectly applied law or policy, as required for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Rather, the Petitioner argues the professional nature of UNITEM.

As explained in our prior decision, even if the Petitioner established the professional status of UNITEM, the Petitioner did not show how this establishes her eligibility for the membership criterion, which requires "[d]ocumentation 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." The professional position of the association is not a determining factor for this criterion. Regardless, the Petitioner did not demonstrate that membership with UNITEM requires outstanding achievements, as judged by recognized national or international experts, consistent with the regulatory criterion.

As it relates to the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv), the Petitioner argues we conducted a "flawed 'analysis'" of her use of the word "or." Furthermore, the Petitioner claims that we rejected or ignored corroborating evidence. In our decision, we indicated the Petitioner stated on appeal that she participated in a fashion project as a jury member *or* a makeup artist and relied upon the evidence previously provided, including a letter from the founder of the [redacted] Furthermore, we concluded that it was unclear whether the Petitioner served in a jury role or a makeup artist role. In addition, we indicated that the Petitioner did not address the evidentiary deficiencies identified by the Director. Specifically, the Director pointed out the initial letter did not include a date and did not identify the specific dates of the judging events, who was judged, and whether the judging work was in the same or an allied field. Moreover, in response to the Director's request for evidence, the Director indicated that the photographs did not establish the dates, places, and individuals judged, along with other evidentiary deficiencies.

On motion, the Petitioner does not provide new facts, supported by documentary evidence, as required for a motion to reopen under 8 C.F.R. § 103.5(a)(2). Instead, the Petitioner references previously submitted documentation, discussed above. Further, the Petitioner does not establish how we incorrectly applied law or policy, as required for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Although the Petitioner alleges our "flawed 'analysis,'" the Petitioner does not contest that she used "or" in her appellate brief, nor does she further respond to her statement. Instead, the Petitioner quotes from the founder's letter and references the submission of photos and samples of jury paperwork. However, the Petitioner does not address the numerous evidentiary deficiencies, which does not demonstrate probative and credible evidence of the Petitioner's participation as a judge of the work of others, consistent with the regulatory criterion.

Finally, as it pertains to the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix), the Petitioner contends that we "erred in evaluation of the opinion of expert of [L-G-]" and did not consider the Petitioner's business activities and achievements. Again, the Petitioner does not provide new facts, supported by documentary evidence, as required for a motion to reopen under 8 C.F.R. § 103.5(a)(2). Moreover, the Petitioner does not show how we incorrectly applied law or policy, as required for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). In our previous decision, we concluded that L-G-'s letter did not overcome the deficiencies identified by the Director, including the failure to

corroborate the Petitioner's annual income with evidence such as payroll, bank, or tax statements, as well as documentation explaining how the general category of "artists/entertainment and recreation" is the comparative "best match" for the Petitioner's occupation and field. Furthermore, we determined the letter did not describe how she has a "personal" and "working" knowledge of average salaries for makeup artists in Moldova.

The Petitioner's motion does not contest any of our issues with L-G-'s letter, nor does it show how we erred as a matter of law or policy. Instead, the Petitioner claims the absence of a comprehensive statistical survey in Moldova and highlights L-G-'s education and experience credentials. As the Petitioner did not overcome the deficiencies in L-G-'s letter, the Petitioner did not provide probative and credible evidence demonstrating that she commands a high salary in relation to others, consistent with the regulatory criterion.

Because the Petitioner has not met the requirements for a motion to reopen or a motion to reconsider, we will dismiss both motions. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.