U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33404406

Date: JAN. 31, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a mixed martial arts (MMA) athlete, seeks classification as an individual of extraordinary ability in athletics. 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.

In order to establish eligibility for the extraordinary ability classification, petitioners must first establish that the relevant individual has a major, internationally recognized award (a one-time achievement) under 8 C.F.R. § 204.5(h)(3), or alternatively, provide evidence that meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).[1] If they meet this initial evidentiary requirement, we then conduct a final merits determination to assess whether the overall record shows that the individual meets the statutory and regulatory definitions of an individual of extraordinary ability. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

The Director of the Nebraska Service Center denied the Form I-140A, Immigrant Petition for Alien Workers, concluding that the Petitioner only provided evidence meeting one criterion: receipt of lesser nationally or internationally recognized prizes or awards for excellence in her field of endeavor. 8 C.F.R. § 204.5(h)(3)(i). 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.

[1] The regulation at 8 C.F.R. § 204.5(h)(4) allows petitioners to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation. While the Petitioner's cover letter makes a passing mention of "comparable evidence" for the first time on motion, there is no contention that any of the criteria do not readily fit her occupation, and so we will not address the issue further.

A. 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). 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 the filing 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, the Petitioner submits a brief and an affidavit, as well as new letters of support and other supporting documentation. She also seeks to qualify under criteria she previously did not pursue and therefore waived: 8 C.F.R. § 204.5(h)(3)(v), original contributions of major significance to the field; and 8 C.F.R. § 204.5(h)(3)(viii), having a leading or critical role for organizations with distinguished reputations.[2] The Petitioner also requests that we remand her case back to the Director for a "de novo" adjudication because her Form I-140 and appeal were completed by a preparer, O-T-, who the Petitioner claims defrauded her by holding herself out as an attorney.[3]

1. Ineffective Assistance Claims

The Petitioner asserts that the ineffective assistance of O-T- is a new fact which merits reopening our prior decision under 8 C.F.R. § 103.5(a)(2). We may consider claims based upon ineffective assistance by attorneys and accredited representatives as a ground for reopening a decision if that assistance was so ineffective that it prejudiced the outcome of a benefit request. *See, e.g., Matter of Lozada*, 19 I&N Dec. 637, 638 (BIA 1988) (addressing ineffective assistance claims in the context of removal proceedings).[4] However, there is generally no remedy available for a petitioner who knowingly assumes the risk of authorizing an unlicensed attorney or unaccredited representative to represent them. *See, e.g., Hernandez v. Mukasey*, 524 F.3d 1014, 1019-20 (9th Cir. 2008) (finding that knowing reliance on the advice of a non-attorney cannot form the basis of a claim for ineffective assistance of counsel in a removal proceeding).

In her motion affidavit, the Petitioner claims that she was "unaware that [O-T-] did not have a law license and was not an attorney." However, the record indicates that on both Form I-140 and the subsequent Form I-290B, Notice of Appeal or Motion, O-T- stated that she was not an attorney and

[2] The motion does not mention the high remuneration criterion at 8 C.F.R. § 204.5(h)(3)(ix), which the Petitioner previously sought to qualify under and which we reserved in our previous decision. An issue not raised on appeal or motion is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

[3] The scope of our review on motion is limited to our last decision, which in this case was the dismissal of the Petitioner's appeal. 8 C.F.R. § 103.5(a)(1)(ii). Since we review cases on appeal de novo, reopening the Petitioner's appeal would provide the review the Petitioner requests without a remand to the Director. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

[4] We note that in order to adjudicate such claims, we require the following evidence: (1) An affidavit from the complainant stating in detail the agreement with counsel, what actions counsel took regarding the case, and what representations counsel made regarding these actions; (2) Evidence that counsel was informed of the allegations against them and given a chance to respond, as well as the response itself, if applicable; and (3) Evidence that a complaint was filed with an appropriate disciplinary authority regarding any violation of ethical or legal responsibilities, or if not, an explanation why not. *Matter of Lozada*, 19 I&N Dec. at 649; *see also Medina-Araujo v. Whitaker*, 754 Fed.Appx. 432, 436-37 (7th Cir. 2018) (affirming that the Seventh Circuit, where Petitioner resides, requires compliance with all *Lozada* requirements to obtain reopening on the basis of ineffective assistance of council).

was instead acting as a preparer and translator. The Petitioner's signature on these forms "establishes a strong presumption" that she knew of and assented to the contents of these filings. *See Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018). She has not provided sufficient credible, reliable, and relevant evidence to overcome that presumption here. *Matter of Chawathe*, 25 I&N Dec. at 376 (noting that under the preponderance of the evidence standard, we "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

In support of her claims regarding O-T-, the Petitioner provides an affidavit, translated screen captures of foreign-language messages she exchanged with O-T-, and a brief from her current legal representative. The messages indicate that the Petitioner paid O-T-, but do not state what specific services O-T- agreed to undertake regarding the initial filing or the appeal. Additionally, while the translation states that the Petitioner has O-T-'s contact information saved under "O- Attorney Miami," none of O-T-'s messages claim that O-T- is an attorney. These messages are insufficient to support the Petitioner's claims that O-T- deceived her by posing as an attorney.

In her affidavit, the Petitioner claims that while she told O-T- she was willing to provide documents such as support letters to establish eligibility, O-T- "did not request any documents," and that O-T- also responded to the Director's request for evidence (RFE) "without requesting documents from [Petitioner] that the USCIS officer required," and states that her petition was denied "a[s] a result" of this. However, the Petitioner's initial filing was accompanied by extensive supporting documentation, including letters of support from various figures in her field. She also provided additional evidence in response to the Director's RFE and on appeal.[5] It is not apparent how O-T- could have obtained and submitted documents such as the Petitioner's Russian refereeing records if she did not ask the Petitioner to provide them.[6] These unresolved discrepancies reduce the credibility and probative value of the affidavit. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that unresolved material discrepancies in the record may lead us to reevaluate the reliability and sufficiency of the evidence provided).

Furthermore, the affidavit does not address why the Petitioner thought O-T- was an attorney despite the fact that O-T- explicitly stated she was not one at various points in Forms I-140 and I-290B, and it does not indicate when and how the Petitioner became aware that O-T- was not an attorney. Without this information, the Petitioner cannot overcome the presumption that, given her signatures on those same forms, she was aware that O-T- was not an attorney. *Matter of Valdez*, 27 I&N Dec. at 499; *cf. Gonzalez v. Gonzales,* 166 Fed.Appx. 238, 241-42 (7th Cir. 2006) (finding that presence of person's signature on various immigration filings raised doubts as to his claim that he was unaware of

[5] Notably, the Form I-140 RFE response includes a letter from O-T- identifying herself as a non-attorney preparer and stating that the Petitioner had read and received the RFE and wanted to change her stated occupation on the Form I-140 from "boxer" to "MMA fighter."

[6] While the attorney letter provided on motion states that the Petitioner "failed to provide her documents in [a] timely manner due to misrepresentation of a non-lawyer paralegal helper" and "was not property [*sic*] notified of all necessary documentation" for the initial submission or the RFE response, 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").

non-attorney immigration consultant's actions).[7] We therefore decline to treat this matter as a claim of ineffective assistance which merits reopening our prior decision. *Cf. Mukasey*, 524 F.3d at 1020.

Finally, we note that the scope of our review on motion is limited to our last decision: the dismissal of the Petitioner's appeal. 8 C.F.R. § 103.5(a)(1)(ii). The affidavit does not allege any faults in O-T-'s work on the appeal, only stating that O-T- prepared it and it was dismissed. For these reasons, the record does not establish that any deficiencies in the appeal were due to mistakes made by O-T-, or that the appeal's outcome would likely have been different without these alleged mistakes. *Cf. Matter of Coelho*, 20 I&N Dec. at 471-72 (stating that a motion to remand based on the availability of new evidence will not be approved unless "the new evidence offered would likely change the result in the case"); *Gonzalez*, 166 Fed.Appx. at 242-43 (declining to find ineffective assistance by non-attorney consultant where non-attorney's conduct did not prejudice the outcome of the case). The Petitioner has not established that the actions of O-T- constitute new facts which merit reopening our prior decision. 8 C.F.R. § 103.5(a)(2).

2. New Facts and Claims on Motion

First, we decline to consider the Petitioner's qualifications for the original contribution and leading or critical role criteria, which she raises for the first time on motion. 8 C.F.R. § 204.5(h)(3)(v) and (viii). The Director concluded that the Petitioner does not qualify for these criteria, and the Petitioner did not mention them on appeal. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. at 336 n.5. While the Petitioner states that she did not raise these issues due to the actions of O-T-, she has not provided sufficient evidence to support her claims of ineffective assistance for the reasons explained above. The remainder of the Petitioner's new evidence on motion is also insufficient to merit reopening our decision, for the reasons below.

a. Membership in Associations which Require Outstanding Achievements of their Members. 8 C.F.R. § 204.5(h)(3)(ii).

On motion, the Petitioner does not address the associations she previously submitted evidence for and instead claims for the first time that she is eligible based on her membership in the Russian national judo and MMA teams, and provides supporting documentation.

The documentation regarding the Russian Federation judo team states that it includes the main team, the reserve of the main team, a junior team and reserve team for competitors up to 23 years old, and a youth team and reserve team for competitors up to 18 years old. The letter from B-A-K-, a national team coach, states that the Petitioner was a member of the national team for five years, but does not state when this occurred. It is therefore not apparent whether the Petitioner was a member of the main, youth, or junior teams, or one of their reserves.

The documentation also includes a list of high-level tournaments which are considered when selecting the main team and its reserve team, but does not specify how many athletes are selected overall or

[7] We further note that the Petitioner has not established that the Seventh Circuit allows ineffective assistance claims involving non-attorneys to be considered as grounds to reopen under the *Lozada* framework. *See id. at* 242 (declining to reach this issue since the respondent did not demonstrate prejudice as a result of the non-attorney's actions).

provide any tournament or other requirements for the junior or youth teams. It is therefore not apparent that these teams require outstanding achievements of their members. *Id.* The documents also state that the team selections are made by all-Russian sports federations and approved by the Ministry of Sports, Tourism, and Youth Policy, and involve "official assessments by coaches and specialists," but does not specify whether any of these selectors are nationally or internationally recognized experts in the field, as required by regulation. *Id.* The Petitioner therefore has not established that her judo team experience qualifies her for the membership criterion.

The materials from the Russian MMA federation are about judges and referees, not about the Petitioner's membership in the MMA team. These materials do not indicate that MMA judges or referees constitute an association as contemplated by the regulation or that becoming an MMA judge or referee in Russia requires outstanding achievements in the field of MMA.

b. Published Material About Petitioner in Professional or Major Trade Publications or Other Major Media. 8 C.F.R. § 204.5(h)(3)(iii).

The newly submitted academic article about the website sports.ru indicates that the "Tribune" area where the article about the Petitioner was published is "the Sports.ru social network," consisting of "microblogs, blogs, and forums," the most popular of which have 23,000 to 36,000 subscribers. There is no indication that the blog [redacted] which published the article in question, is considered a major trade or professional publication in the field of MMA or is otherwise a form of major media. The only information about the [redacted] YouTube channel, which interviewed the Petitioner, is its YouTube profile page, which states its subscriber number and claims that it has "the most interesting MMA news and interviews with fighters." We decline to rely on this unsupported assertion to find that [redacted] is a major trade or professional publication. *See Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758 at *7 (C.D. Cal. July 6, 2007), *aff'd*, 317 F.App'x 680 (9th Cir. 2009) (holding that we need not rely on a magazine cover's assertion that it is "The #1 Magazine of Mixed Martial Arts!" in assessing the publications criterion). The newly provided evidence does not establish the Petitioner's eligibility under the published materials criterion. 8 C.F.R. § 204.5(h)(3)(iii).

c. Participation as a Judge of the Work of Others in the Field. 8 C.F.R. § 204.5(h)(3)(iv).

On motion, the Petitioner states that she actually acted as a judge of MMA competitions in Russia, rather than a referee, as we concluded on appeal, and provides additional documentation in support. If this is the case, however, the Petitioner would still only meet two of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), rather than the required three, and still would not qualify for the requested classification. We therefore need not reach this issue and will reserve it. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

We will note, however, that there are several incongruities in the Petitioner's refereeing book and its translation. The acronym "MMA" is written the same way in Cyrillic characters as in Roman ones. However, the translation of the refereeing book states that the Petitioner's "sports achievement" is an "MMA MS (Master of Sport)," while the corresponding text in the original document only states

"MC" in Cyrillic characters. Similarly, the translation states that the organization which recorded the Petitioner's activities as a referee is the "Public Organization of MMA [redacted] but the corresponding Cyrillic text in the original document does not contain the acronym "MMA." It is not apparent why the translation includes the acronym "MMA" in these instances while the original document does not.

We further note that while the translation states that the recording organization is "Public Organization of MMA [redacted] that organization's email address is written in Roman characters in the original document and includes the word "judo," but not the acronym "MMA." Farther down on the same page of the document, the translation states that the organization that assigned judging duties to the Petitioner is the "Public Organization Federation of JUDO [redacted] On the second page, the organization filing the registration card is translated once more as "PUBLIC ORGANIZATION 'JUDO FEDERATION [redacted] If this refereeing book reflects the Petitioner's experience as an MMA judge, as the Petitioner claims, it is not apparent why a judo federation assigned her judging duties and filed her registration card.

Finally, while most of the entries in the refereeing book do not state the sport being judged, one 2021 competition was, according to the translation, in judo rather than in MMA. In light of these inconsistencies, we note that on the first page of the original document, where the translation says the field is "Name of sport," the word "MMA" appears in letters that look notably sharper than the text in the rest of the document. These unresolved inconsistencies in the translation and the original refereeing book raise doubts about the reliability of both documents. *Matter of Ho*, 19 I&N Dec. at 591-92; *see also Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021).[8]

Because the translation of the refereeing book does not match the original document, we cannot determine whether it supports the Petitioner's claims, and therefore cannot grant it any evidentiary weight. In any future filings in this matter, the Petitioner should provide evidence resolving these incongruities.

Although the Petitioner has submitted additional evidence in support of the motion to reopen, she has not established that this evidence merits reopening our prior decision. Therefore, the motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(2), (4).[9]

B. Motion to Reconsider

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.

[8] While the March 2024 letter from the Russian MMA Federation provided on motion states that the Petitioner "judged a number of city and regional MMA tournaments," it does not specify when she did so, and so does not resolve the contradictions in her refereeing book or establish that she had met the judging criterion as of when the petition was filed in 2023. 8 C.F.R. § 103.2(b)(1).

[9] However, the Petitioner may file a new petition and submit the additional evidence she compiled for this motion, if desired.

On motion, the Petitioner asserts that we erred in failing to consider newly submitted documents on appeal.

The only newly submitted evidence which we declined to consider on appeal was the bylaws of the National Russian MMA team. As explained in our prior decision, we generally do not consider evidence for the first time on appeal where the petitioner was previously put on notice and given a reasonable opportunity to provide that evidence. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). On motion, the Petitioner claims that this evidence was not submitted until the appeal because of the actions of O-T-, but for the reasons explained above, the record does not support these claims. Furthermore, the Petitioner does not specify what law or policy we applied incorrectly in this matter. As such, this claim does not meet the requirements of 8 C.F.R. § 103.5(a)(3).

The Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued that decision. She therefore has not met the requirements of a motion to reconsider, and the motion will be dismissed. 8 C.F.R. § 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.