U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 19336659

Date: MAY 9, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a martial arts instructor, 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 Nebraska Service Center denied the petition. We dismissed the Petitioner's appeal and three subsequent motions. The matter is now before us on a fourth motion to reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. 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 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 criteria 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). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits U.S. Citizenship and Immigration Services' authority to reconsider to instances where an applicant has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements at 8 C.F.R. § 103.5(a)(1)(iii) (such as submission of a properly completed and signed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. Specifically, 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 proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). In these proceedings, it is the petitioner's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

In our most recent decision, the dismissal of the Petitioner's third motion, we determined that the Petitioner did not show that we erroneously applied law or policy in deciding that he did not meet the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). In addition, the Petitioner did not establish that we erred in reserving a determination on his intent to continue to work in his area of expertise under section 203(b)(1)(A)(ii) and 8 C.F.R. § 204.5(h)(5).

The review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we examine any new arguments to the extent that they pertain to our dismissing his third motion. Thus, the issue before us is whether we erred in determining that he did not establish that we incorrectly applied law or policy in dismissing his prior motion to reconsider.

In the current motion, the Petitioner submits an almost identical brief from his third motion. *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, our most recent decision thoroughly analyzed and explained why the indicated evidence and claimed arguments did not meet the regulatory requirements. Because he provides the same assertions with essentially the same brief, which we have previously and carefully addressed, the Petitioner did not establish that we incorrectly applied law or policy in our prior decision dismissing his third motion. Disagreeing with our conclusions without showing how 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. Accordingly, the Petitioner did not demonstrate that his current motion meets the requirements for a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss his motion to reconsider.

## III. CONCLUSION

The Petitioner has not shown that we incorrectly applied law or policy in our previous decision based on the record before us.

**ORDER:** The motion to reconsider is dismissed.