



**U.S. Citizenship
and Immigration
Services**

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

In Re: 20218937

Date: MAR. 23, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a media production agency, seeks to classify the Beneficiary, a senior vice president of production finance, as a foreign national of extraordinary ability in business. To do so, the Petitioner seeks O-1 nonimmigrant classification, available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability in business, either a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). We dismissed the Petitioner's subsequent appeal on the same basis.¹ The matter is now before us on a motion to reopen and a 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, the Petitioner has not met this burden and we will dismiss both motions.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue to work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "[e]xtraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

¹ *See* ID# 17872747 (AAO Aug. 12, 2021).

Next, DHS regulations set forth the evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner must submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(3)(iii)(C). When a petitioner provides the requisite evidence, we then determine whether the record, viewed in its totality, shows sustained national or international acclaim such that the individual is prominent in the field of endeavor.

In addition, a motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. 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. 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The issue before us is whether the Petitioner has established that our decision to dismiss its appeal was based on an incorrect application of law or USCIS policy and/or has presented new facts to warrant reopening its appeal. The Petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision.

A. AAO Decision

In dismissing the Petitioner's appeal, we acknowledged its claim that it had submitted evidence relating to three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). We evaluated the evidence submitted in support of two of these criteria, including: membership in associations that require outstanding achievements and critical or essential capacity. *See* 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) and (7). Based on our *de novo* review, we reached the same conclusion as the Director and determined that the Petitioner demonstrated the Beneficiary's eligibility for only one criterion, critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

Although the Petitioner also claimed to meet the criterion related to high salary at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8), we reserved that criterion and did not address it in our decision. The regulations require the Petitioner to establish that the Beneficiary meets *at least three* of the alternative evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) to meet the initial evidence requirements for this classification. Even if we had determined that the Petitioner met the remaining claimed criterion, our decision to dismiss the appeal would have been unchanged, as the Petitioner could not establish that the Beneficiary satisfies the initial evidence requirements by meeting only two criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

B. Motion to Reconsider

On motion, the Petitioner asserts that we did not give sufficient weight to relevant evidence submitted in support of the petition in evaluating the Petitioner's claims made under the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). We address its specific claims below.

Documentation of the individual'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.
8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

Our appellate decision noted that the Petitioner claimed that the Beneficiary fulfills this criterion based on being an Executive Member of Women in Film Los Angeles (WIF LA) and referenced membership information provided from that organization and a letter from [REDACTED] [REDACTED] [REDACTED] of WIF LA.²

Our appellate decision noted that according to the documentation submitted from WIF LA, membership at the Executive Member level is for "industry leaders in film, television, or digital media, with advanced experience as industry professionals," and requires payment of \$500 and Executive Committee review. In addition, [REDACTED] provides that membership at the Executive Member level requires review and approval of the application by the Executive Committee of the Board of Directors, consideration of "the applicant's advanced experience in the film, television, or digital media as an industry professional," and experience at "an advanced or executive level." [REDACTED] also states that membership at the Executive Member level requires that the applicant "must be the cream of the crop in their field," although this requirement is not stated elsewhere in the submitted materials and no explanation was provided regarding how this factor is weighed.

In our prior decision, we explained that in order to meet this criterion, the Petitioner must establish the Beneficiary'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. We found that the Petitioner did not show that membership in WIF LA as an Executive Member is reserved to those who have demonstrated outstanding achievements rather than a certain level of experience and the payment of dues, and the Petitioner did not demonstrate that possessing the stated industry experience is tantamount to outstanding achievements consistent with this regulatory criterion.

In addition, we found that although [REDACTED]'s letter provides that other Executive Members of WIF LA include [REDACTED], [REDACTED] of Fox Family, and [REDACTED], the [REDACTED] [REDACTED] for Paramount Pictures, the fact that Executive Members include top executives of big companies is insufficient to establish that being an Executive Member requires outstanding achievements in the field of business.

² On motion, the Petitioner does not pursue its claim on appeal that the Beneficiary's position as [REDACTED] [REDACTED] of the Norwegian American Chamber of Commerce Los Angeles Chapter, Inc. meets this criterion.

We further determined that [REDACTED]'s letter, indicating that the Executive Committee of the Board of Directors reviews and approves the membership application, does not indicate whether recognized national or international experts judge the outstanding achievements for membership, as required by the regulation. Moreover, articles from Variety.com and Thewrap.com reflecting biographical information for individuals who became board members in [REDACTED] 2020, and the 2020 WIF LA Annual Report listing the names of the "2020 Board of Directors," were insufficient to establish the expertise and recognition of those individuals judging the Beneficiary for admission in 2018.

On motion, the Petitioner argues that we dismissed evidence establishing that WIF LA requires outstanding achievements at the Executive Member level, as shown by its requiring "working for years in the industry" and being "the cream of the crop in their field," and evidence showing that other Executive Members "have outstanding achievements in their field." Rather than dismiss the documentation submitted from WIF LA, however, our decision analyzed and explained why that evidence did not meet the regulatory requirements. As noted in our prior decision, the issue for this criterion is whether membership is based on outstanding achievements, as judged by recognized national or international experts. We determined that the material from the WIF LA website and the letter from [REDACTED] did not show that membership at the Executive Member level is reserved to those who have demonstrated outstanding achievements and, further, did not address all elements of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) as it did not indicate whether membership is judged by recognized national or international experts in their fields. Moreover, as noted, we explained that the fact that Executive Members include top executives of big companies is insufficient to establish that Executive Membership requires outstanding achievements in the field of business.

Based on the foregoing discussion, we conclude the Petitioner has either not addressed or not submitted legal arguments to overcome our conclusions with respect to the criterion that we addressed in our appellate decision. As noted, we did not reach the merits of the Petitioner's arguments on appeal with respect to the remaining claimed criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8) because doing so could not change the outcome of the decision. Even if we determined that it submitted evidence to establish that the Beneficiary meets that criterion, it could not succeed on a claim that it satisfied the initial evidence requirement for this classification, which requires it to show that the Beneficiary meets three of the alternative evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8).

We acknowledge that the Petitioner addresses the merits of the evidence submitted in support of the high salary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8) at some length in its brief in support of this combined motion.³ It maintains that our decision not to discuss this criterion in our decision was in error. However, it does establish how we misapplied the law or policy by declining to address one criterion that was not relevant to the outcome of our decision. As we explained above, federal agencies, like courts, are not generally required to make findings and decisions unnecessary to the results they reach. *Bagamasbad*, 429 U.S. at 25-26. The Petitioner has not established how we erred by reserving this issue.

Had the Petitioner overcome our previous determination with respect to the criterion at 8 C.F.R.

³ It resubmits several salary comparisons previously submitted into the record for the position of "financial manager" from the websites Fldatacenter.com, Careeronestop.org., Bls.gov, Payscale.com, Money.usnews.com, and Salarylist.com, intended to support its claim that the Beneficiary satisfies the high salary criterion.

§ 214.2(o)(3)(iii)(B)(2), we would address the merits of the Petitioner's claims regarding the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). However, as it has not done so, we will not address that issue here. For the reasons discussed above, we will dismiss the motion to reconsider.

C. Motion to Reopen

On motion, the Petitioner submits an article dated [] 2015 from Variety.com, reporting the appointment of [] as the [] of WIF LA in support of its claim that the Beneficiary satisfies the membership criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2). We note that the aforementioned 2020 WIF LA Annual Report listed [] as the organization's [] []. As noted in our prior decision, the issue for this criterion is whether membership is based on outstanding achievements, as judged by recognized national or international experts. Although this article shows that [] was the [] of WIF LA when the Beneficiary became an Executive Member of the organization, it does not indicate whether membership in WIF LA at the Executive Member level is reserved to those who have demonstrated outstanding achievements or whether recognized national or international experts judge the outstanding achievements for membership, as required by the regulation. Therefore, the Petitioner has not overcome our finding that it does not meet the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2). As the evidence does not demonstrate eligibility, we will dismiss the motion to reopen.

III. CONCLUSION

For the reasons discussed, the Petitioner's motion to reconsider has not shown that our latest decision was based on an incorrect application of law or USCIS policy, and the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. The motion to reconsider and the motion to reopen will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.