U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20204589

Date: MAR. 24, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, an artist representative and production company, seeks to classify the Beneficiary, an actress, as an individual of extraordinary achievement in motion picture or television productions. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas available to foreign nationals whose achievements in this industry have been recognized in the field through extensive documentation.

The Director of the Vermont Service Center denied the petition, and we dismissed the appeal. Subsequently, we dismissed a motion to reconsider.[1] The matter is now before us on a second 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

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations include the following definition: "*Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field."

Next, DHS regulations set forth the evidentiary criteria for establishing an individual's record of extraordinary achievement. First, a petitioner can demonstrate the beneficiary's nomination for, or receipt of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award. 8 C.F.R. § 214.2(o)(3)(v)(A). If the petitioner does offer this information, then it must submit sufficient qualifying exhibits that satisfy at

[1] *See* In Re: 18645879 (AUG. 03, 2021).

least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*6*). The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) ("The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met."). Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows extraordinary achievement in the motion picture and television industry. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (v).[2]

Further, 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A. Procedural History

In denying the petition, the Director determined that the Petitioner did not claim the Beneficiary met the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A), and she further found that although the Petitioner provided evidence relating to five alternative regulatory criteria, 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*), (*2*), (*3*), (*5*), and (*6*), the Petitioner did not satisfy any of those five criteria. On appeal, the Petitioner maintained that the evidence satisfies those five criteria, plus an additional criterion relating to major commercial or critically acclaimed successes at 8 C.F.R. § 214.2(o)(3)(v)(B)(*4*).

In dismissing the appeal, we determined that the Petitioner did not demonstrate that the Beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*3*). In addition, our decision advised that as the Petitioner did not claim the Beneficiary's eligibility for the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(*4*) before the Director, either at the time it filed the petition or in response to the Director's request for evidence (RFE), we would not consider this claim in our adjudication of the appeal.[3] Further, we reserved a determination on the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*) and (*6*), as the Petitioner was unable to fulfill at least three criteria.[4] On motion, the Petitioner requested us to reconsider our decision without showing how we erroneously applied law or policy. For the reasons discussed below, the Petitioner's current motion to reconsider does not overcome our prior decision.

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[2] *See also Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

[3] *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec 533 (BIA 1988).

[4] *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

As stated, 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 proceeding at the time of the decision. *See* 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner submits a brief in which it makes the same arguments it made in its prior motion brief and restates and describes the evidence it submitted under the six claimed criteria. The Petitioner, however, 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. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006)[5] ("[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior . . . decision. The moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision . . . ."). Furthermore, our decision analyzed and explained why the evidence and arguments addressed in the prior motion did not meet the regulatory requirements.

The Petitioner's motion does not meet the applicable requirements of a motion to reconsider because it does not establish that our decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). In particular, the Petitioner does not cite to any pertinent precedent decision, statute, regulation, binding federal court decision, USCIS policy statement, or other applicable authority to establish that the prior decision was defective in some regard. Because the Petitioner did not raise such allegations of error, we will dismiss the motion to reconsider.

III. CONCLUSION

The Petitioner did not demonstrate that our previous decision dismissing its motion was based on an incorrect application of law or policy.

ORDER: The motion to reconsider is dismissed.

[5] *O-S-G-* relates to motions to reconsider before the Board of Immigration Appeals, governed by 8 C.F.R. § 1003.2(b)(1), which provides: "A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority." These requirements are fundamentally similar to those found at 8 C.F.R. § 103.5(a)(3), and therefore the same logic applies.