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

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

MATTER OF A-O-R-D-L-

DATE: NOV. 6, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, who was a professor at the [REDACTED] seeks classification as an individual “of extraordinary ability” in education. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. Previously, we dismissed the Petitioner’s appeal, and reaffirmed that decision in two motion adjudications. The matter is now before us on a third motion to reconsider. The motion to reconsider will be denied.

I. Motion to Reconsider

In Part 3 of his Notice of Appeal or Motion, Form I-290B, the Petitioner indicates that he is filing a motion to reconsider. In support of his motion, the Petitioner submits the cover page of a January 28, 2015, Administrative Appeals Office (AAO) non-precedent decision that the Petitioner asserts related to a competitive runner seeking classification as an individual “of extraordinary ability” in athletics.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that our original decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider is based on the existing record and the Petitioner may not introduce new facts or new evidence relative to his or her arguments. A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new documents. *Compare* 8 C.F.R. § 103.5(a)(3) *and* 8 C.F.R. § 103.5(a)(2).

The Petitioner has not demonstrated that we should grant his third motion to reconsider, because he has not cited to a legal authority or policy showing that we erred in our previous decision, dated May 8, 2015. First, the Petitioner’s submission of the cover page of a non-precedent decision does not establish that we erred in our previous decision. While the regulation at 8 C.F.R. § 103.3(c) indicates that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The regulation at 8 C.F.R. § 103.5(a)(3) requires the Petitioner to support his motion to reconsider with “any pertinent precedent decisions,” which do not include non-precedent decisions. Moreover, on motion, the Petitioner has not filed a

complete copy of the non-precedent decision. Rather, the Petitioner submits the cover page of the non-precedent decision that lacked sufficient identifying information relating to the case. Furthermore, according to the Petitioner, the non-precedent case involved a competitive runner. The Petitioner has not shown that the field in which he claims extraordinary ability, which is education, is sufficiently analogous to the field of expertise discussed in the non-precedent case. On motion the Petitioner offers a criterion to criterion comparison between the two cases, in which he lists the quantity of the accomplishments, and asserts that we erred in our May 8, 2015, decision because “[he has] much more evidence and categories than the other petitioner,” a competitive runner. As we discussed in *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), “truth is to be determined not by the quantity of evidence alone but by its quality” and 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.” Thus, at issue is the quality of the Petitioner’s accomplishments rather than a comparison of the number of exhibits with an approvable petition. The Petitioner has also not provided sufficient legal authority explaining how an approved petition involving a competitive runner demonstrates that his petition should similarly be approved.

Second, the Petitioner’s citation of *Chawathe*, 25 I&N Dec. at 376, for the standard of proof in immigration proceedings does not suggest that our previous decision was based on an incorrect application of law or policy. *See* 8 C.F.R. § 103.5(a)(3). In each of our previous decisions we explained at length why the Petitioner has not demonstrated that it is more likely than not that he qualifies for the classification sought. The Petitioner does not explain how our analysis is reflective of applying a higher standard of proof. Upon review, we find that we adequately analyzed each piece of evidence, and, when concluding it did not meet a given criterion, provided an explanation. The Petitioner does not address how *Chawathe* implicates those specific findings individually. Accordingly, the Petitioner’s reliance on the very general language in that precedent decision does not support a grant of the instant motion.

Third, on motion, the Petitioner indicates that the Director and we “had confirmed that [he] had presented evidence in the following categories: I (Award), IV (Judge) and VI (Publication).” Although the Petitioner had filed documents in support of his assertions that he met these and other criteria, our decisions found that the Petitioner met only the two relating to participation as a judge and authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi). In our previous three decisions, dated July 25, 2014; December 15, 2014; and May 8, 2015, we discussed the Petitioner’s filings relating to six other criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(viii) pertaining to prizes and awards, membership in associations that require outstanding achievements, published material about the Petitioner, original contributions of major significance, display at artistic exhibitions or showcases, and performance in a leading or critical role. These decisions explained why he did not satisfy these remaining six categories.

On motion, the Petitioner affirms that he meets the criteria under 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v) and (vii). In support of his assertion, the Petitioner points to the same items and makes the same legal arguments as those he noted and advanced in his appeal and two previous motions. The statement the Petitioner files in support of the instant motion, with respect to satisfying at least three

criteria, is substantially the same as the one he submitted in support of his previous motion, which we concluded did not warrant reopening the matter. Other than noting that his petition should be approved because we approved a competitive runner's petition in a January 28, 2015, non-precedent decision, the Petitioner has not identified any error in our May 8, 2015, decision, as relating to the criteria under the regulation at 8 C.F.R. § 204.5(h)(3). As he had requested in his second motion, the Petitioner asks us in the instant motion to "review with care [his] entire record for the approval of [the] I-140 [petition]." 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. *Cf. Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). As we have previously reviewed all relevant filings in the record and concluded that the Petitioner did not establish his eligibility for the petition, we will not again review the evidence in absence of a showing that our previous decision was made in error.

Fourth, the Petitioner has not demonstrated that we erred in our previous decision for not discussing his intent to enter the United States to continue his work as a professor. Having determined that the Petitioner did not corroborate his assertions of eligibility as an individual of extraordinary ability, we need not expressly address the Petitioner's intent to continue his work in the United States. Our finding on this issue would not affect our ultimate conclusion that the Petitioner is not eligible for the exclusive classification sought. Similarly, we did not err in not conducting a final merits determination. In accordance with the relevant regulation and controlling case law, the Petitioner, as initial evidence, must first establish that he meets at least three of the ten criteria set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). *See* 8 C.F.R. § 204.5(h)(3); *Kazarian v. USCIS*, 596 F.3d 1115, 1122 (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); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review). In this case, as the Petitioner has not shown that he meets at least three of the ten criteria, we need not conduct a final merits determination. Nevertheless, a review of the record in the aggregate supports a finding that the Petitioner has not documented the level of expertise required for the classification sought.¹

II. Conclusion

The Petitioner has not shown that the motion to reconsider should be granted, because he has not stated any valid reason for reconsideration, nor has he sufficiently supported any valid reason for reconsideration with pertinent legal precedent or other legal authority establishing that our May 8, 2015,

¹ We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

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decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3). Accordingly, the instant motion to reconsider will be denied.

The burden of proof in visa petition proceedings remains entirely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the motion will be denied.

ORDER: The motion to reconsider is denied.

Cite as *Matter of A-O-R-D-L-*, ID# 14615 (AAO Nov. 6, 2015)