U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-O-O-

DATE: APR. 3, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a model, seeks classification as an individual of extraordinary ability in the arts. 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 Acting Director of the Nebraska Service Center denied the Petitioner's Form I-140, Immigrant Petitioner Alien Worker. We dismissed the Petitioner's appeal[1] and subsequently denied a motion to reopen.[2]

The matter is now before us on a motion to reconsider. Upon review, we will deny 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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate 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 documentation that meets at least three of the ten categories 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 submits qualifying evidence under at least three criteria, we will then determine whether the totality of 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.[3]

---

[1] *See Matter of J-O-O-*, ID# 868229 (AAO Jan. 26, 2018).

[2] *See Matter of J-O-O-*, ID# 1482034 (AAO Sept. 5, 2018)

[3] *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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative

A motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reconsider are located at 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. PROCEDURAL HISTORY

The Director denied the petition, finding that the Petitioner did not satisfy the initial evidentiary criteria applicable to individuals of extraordinary ability, either a major, internationally recognized award or at least three of ten possible forms of documentation. Specifically, the Director determined that the Petitioner did not meet any of the criteria. We then dismissed the Petitioner's appeal, concluding that she only fulfilled the criterion for judging at 8 C.F.R. § 204.5(h)(3)(iv). Subsequently, we denied the Petitioner's motion to reopen, determining that her additional evidence did not establish that she achieved any additional criteria.

In the current motion to reconsider, the Petitioner references the Director's decision made in a prior petition filing, as well as the Director's request for evidence (RFE) issued in the most recent filing. Thus, the Petitioner argues that she meets two additional criteria.

III. ANALYSIS

At the outset, the Petitioner did not include the required statement about whether or not the validity of the unfavorable decision has been, or is, the subject of any judicial proceeding. 8 C.F.R. § 103.5(a)(1)(iii)(C). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Moreover, for the reasons discussed below, the Petitioner's motion to reconsider does not establish that we erred in our prior decision.

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 addition, a motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or Department of Homeland Security.

The Petitioner contends that the Director previously determined in denying her first petition that she satisfied the awards criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i).[4] In addition, the Petitioner argues that in the RFE for her current petition, the Director indicated that she fulfilled the published material criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii).[5] Accordingly, the Petitioner claims that she meets three of the evidentiary criteria.

---

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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

[4] The Director stated that the Petitioner "has provided sufficient documentation" to meet the awards criterion without identifying the documentation or indicating which award(s) fulfilled the criterion.

[5] The Director indicated that "[t]his criterion has been met" for published material without providing any further explanation or justification.

In regards to her prior petition, the scope of the Petitioner's eligibility is limited to the record of proceedings regarding only this petition. Further, statements or determinations by a director in an RFE do not constitute a final or official decision. In fact, the Director issued a decision explaining why her evidence did not meet the evidentiary criteria, including the awards and published material criteria. In addition, we are not bound by decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000). Finally, we conducted a *de novo* review of the record regarding the Petitioner's appeal and evaluated her evidence in her motion to reopen. In both instances, we thoroughly analyzed the evidence and explained why her documentation did not satisfy the awards and published material criteria. Accordingly, the Petitioner did not demonstrate that we erred in finding that she fulfilled only one criterion.

IV. CONCLUSION

The Petitioner has not shown that our previous decision was incorrect based on the record before us. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

Cite as *Matter of J-O-O-*, ID# 2675726 (AAO Apr. 3, 2019)