



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

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

MATTER OF J&P I-, L.L.C.

DATE: DEC. 23, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a Chinese restaurant and Asian produce grocery market, seeks classification for the Beneficiary as an alien of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). The Director, California Service Center, denied the petition. We dismissed the subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

The Director found, and we agreed, that the Petitioner did not meet the evidentiary requirements necessary to demonstrate the Beneficiary's extraordinary ability in the culinary arts. On motion, the Petitioner submits a brief challenging our finding that it did not satisfy 8 C.F.R. § 214.2(o)(3)(iv)(A), which calls for "[e]vidence that the [foreign national] has been nominated for, or has been the recipient 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." Specifically, the Petitioner states: 1) that we improperly imposed a higher standard than required under the regulations, and 2) that we erred by characterizing some of the Beneficiary's awards as regional, as opposed to national, awards.

I. LAW

The regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) provides, in pertinent part, that a motion must be: "Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." 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 United States Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record. *Id.*

The classification the Petitioner seeks for the Beneficiary provides nonimmigrant status to an individual "who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and who is coming temporarily to the United States to continue work in the area of extraordinary ability." 8 C.F.R.

(b)(6)

Matter of J&P I, L.L.C.

§ 214.2(o)(1)(ii)(A)(1). The regulation at 8 C.F.R § 214.2(o)(3)(iv) further states that, to establish extraordinary ability in the arts:

[The foreign national] must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

(A) Evidence that the [foreign national] has been nominated for, or has been the recipient 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; or

(B) At least three of the following forms of documentation [listed under subparagraphs (1)-(6)].

II. ANALYSIS

On motion, the Petitioner does not submit a statement indicating if the validity of our May 18, 2015, unfavorable decision has been or is the subject of any judicial proceeding. The regulation at 8 C.F.R. § 103.5(a)(4) requires that "[a] motion that does not meet applicable requirements shall be dismissed." Regardless, as discussed below, the Petitioner has not otherwise shown the Beneficiary's eligibility for the classification.

On motion, the Petitioner maintains that it documented that the Beneficiary won a qualifying award under prong (A) of 8 C.F.R § 214.2(o)(3)(iv). Although the Petitioner previously asserted that it also met prong (B) of that regulation, it no longer advances this position and, accordingly, has abandoned it. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

The record contains evidence of the Beneficiary's receipt of the following:

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In our dismissal, we noted that the Petitioner discussed only the [redacted] title on appeal and we found that:

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A) specifically requires that the [B]eneficiary's awards be significant nationally or internationally in the field of

endeavor, and it is the [P]etitioner's burden to establish every element of this regulation. The record contains insufficient evidence establishing the significance and magnitude of the preceding competition and the extent to which the nominees or winners of such an award are recognized beyond the issuing body. The [P]etitioner did not provide general information about the competition (such as the eligibility criteria, the number of entrants, or the percentage of entrants who earned some type of recognition, including the number of chefs receiving the same title as the [B]eneficiary).

On motion, the Petitioner does not address the issues highlighted above. Instead, it references the definition of extraordinary ability provided at 8 C.F.R. § 214.3(o)(3)(ii):

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The Petitioner indicates that the definition of extraordinary ability requires a showing of prominence in the field. It states that, to achieve prominence, an individual need not have received an award on a level similar to that of an Academy Award, an Emmy or a Grammy. It reasons that, by demanding an award of such stature, we imposed an impermissibly high standard. As noted above, however, 8 C.F.R. § 214.2(o)(3)(iv)(A) explicitly lists the receipt of or nomination for "an Academy Award, an Emmy, a Grammy, or a Director's Guild Award" as examples of the kinds of evidence that satisfy prong (A). The phrase "such as" implies the awards must be of a similar kind or character.¹ The Petitioner has not pointed to any legal authority indicating that under the plain language of the regulation, we erred in requiring the Petitioner to establish the Beneficiary's receipt of or nomination for a national or international award of similar significance to the examples in the regulation.

A basic tenet of statutory construction, equally applicable to regulatory construction, is that a text should be construed so that effect is given to all its provisions, that no part will be inoperative or superfluous, void or insignificant, and that one section will not invalidate another. *AWPU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003) (citing *Silverman v. Eastrich Multiple Investor Fund*, 51 F.3d 28, 31 (3d Cir. 1995)). In accordance with this principle, we confirm that 8 C.F.R. § 214.2(o)(3)(iv)(A) requires evidence showing receipt of or nomination for a national or international award or prize similar in significance to an Academy Award, an Emmy, a Grammy, or a Director's Guild Award. Even if we were to conclude that a "significant national or international" award could be of considerably less significance than the examples in the regulation, it still must be "significant," and the Petitioner has not responded to our concern that the record lacks evidence that the 2013 award is significant.

¹ See www.merriam-webster.com/dictionary/such (defining "such" as "of a kind or character to be indicated or suggested <a bag such as a doctor carries>").

(b)(6)

Matter of J&P I, L.L.C.

The second error the Petitioner alleges is that we incorrectly categorized some of the Beneficiary's awards as regional instead of national in scope. When discussing this concern, however, the Petitioner references awards that it did not raise on appeal as qualifying. Nevertheless, as we addressed the awards in our appellate decision, we will address the Petitioner's concerns on motion. The Petitioner noted the [REDACTED] was covered by the [REDACTED] which it calls a "significant Swiss newspaper." The Petitioner reasons that this publication's coverage of the event means the contest is nationally significant. The Petitioner did provide the circulation of this paper. Nevertheless, as noted in our previous decision, the Petitioner has not provided a complete certified translation as required under 8 C.F.R. § 103.2(b)(3). Regardless, according to the summary translation, the article confirms only that the competition was held at the [REDACTED] restaurant in [REDACTED]. Without additional information about the contest, including the credentials of the judges and the contest rules, the Petitioner has not established that the award is a significant culinary award.

The Petitioner also states that the following two awards were not regional, but national, awards:

- [REDACTED]
- [REDACTED]

According to the Petitioner, because the [REDACTED] issued these awards and the provinces have a combined population of over 100 million, the titles should be considered national in scope. A motion to reconsider must be supported by legal authorities. 8 C.F.R. § 103.5(a)(3). The Petitioner did not provide any legal authority to support the proposition that the size of a region is relevant to whether the term regional equates to national.²

Even assuming these awards were national, we note that simply having received or being nominated for awards with a national or international scope would not satisfy the regulatory requirements of 8 C.F.R. § 214.2(o)(3)(iv)(A). As discussed, a qualifying award must also be a "significant" national or international award. The Petitioner has not provided evidence to show that the Beneficiary's awards are of such stature. As a result, it has not satisfied the regulatory requirements necessary to demonstrate extraordinary ability in the arts.

III. CONCLUSION

The Petitioner has not shown that its motion to reconsider should be granted, because it has not provided a sufficient basis for reconsideration. It has also not supported the filing with pertinent legal precedent or other legal authority establishing that our May 18, 2015, decision was based on an incorrect application of law or USCIS policy. *See* 8 C.F.R. § 103.5(a)(3).

² Black's Law Dictionary defines "national" as: "1. Of or relating to a nation <national anthem>. 2. Nationwide in scope <national emergency>." *Black's Law Dictionary* 1121 (9th ed. 2009).

Matter of J&P I-, L.L.C.

The motion will be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the benefit sought. Section 291 of the Act. Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

Cite as *Matter of J&P I-, L.L.C.*, ID# 14875 (AAO Dec. 23, 2015)