U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18645879

Date: AUG. 03, 2021

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, concluding that the record did not establish, as required, that the Beneficiary met at least three of the six evidentiary criteria. Specifically, the Director found that the Petitioner did not satisfy any of the criteria. We dismissed the Petitioner's subsequent appeal. The matter is now before us on 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, we conclude that the Petitioner has not met that burden. Accordingly, we will dismiss the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).[1]

[1] 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 and, if so, the court, nature, date, and status or result of the proceeding."

II. 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 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]

III. 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. 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 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 the Petitioner provided evidence relating to five criteria: lead or starring participant in productions or events at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*), published materials at 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*), lead, starring, or critical role for organizations or establishments at 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*), significant recognition for achievements at 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*), and high salary at 8 C.F.R.

8 C.F.R. § 103.5(a)(1)(iii). Therefore, the Petitioner's motion does not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

[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."

§ 214.2(o)(3)(v)(B)(*6*). The Director concluded that the Petitioner did not satisfy any of those five alternative regulatory 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 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*), 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*), and 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*). In addition, our decision advised that as the Petitioner did not claim the Beneficiary's eligibility for the major commercial or critically acclaimed successes 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. *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). Further, we reserved a determination on the criteria related to significant recognition for achievements at 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*) and high salary at 8 C.F.R. § 214.2(o)(3)(v)(B)(*6*), as the Petitioner was unable to fulfill at least three 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 incorrectly determined that the previously submitted evidence was insufficient to satisfy the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*6*).

> *Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*).

In our appellate decision, we noted that regarding the Beneficiary's past services in productions or events, the Petitioner referenced material from the magazines *Contigo*, *Risa*, and *Quem*. However, we determined that the Petitioner did not demonstrate how the evidence reflects the Beneficiary's services as a lead or starring participant in productions or events. We found that, although the documentation briefly mentions the Beneficiary's roles in plays and television series, the material from *Contigo* and *Risa* does not show the Beneficiary's service as a lead or starring participant. Specifically, the Contigo article references the Beneficiary as [redacted] but provides no further material relating to a leading or starring role for the soap opera. Likewise, the Risa article indicates that "[t]he character in the soap opera [redacted] was the culmination of much study and dedication" but does not establish the prominence of the role to be leading or starring for the soap opera. As it relates to *Quem*, the material consists of two photographs of the Beneficiary, including with another actress, but the Petitioner did not demonstrate how the photographs show the Beneficiary's services as a lead or starring participant in productions or events. Notwithstanding the forgoing, we found that the Petitioner did not establish how the magazine material qualifies as "critical reviews, advertisements, publicity releases, publications contracts, or endorsements" consistent with

this regulatory criterion. Moreover, we found that the Petitioner did not demonstrate that the evidence shows the distinguished reputation of the [redacted] soap opera or any other productions or events.

In addition, our appellate decision noted that the Petitioner also argued eligibility under this criterion based upon the Beneficiary's participation in a print advertising campaign for [redacted] and submitted photographs of the Beneficiary and screenshots from *Wikipedia* regarding [redacted] We noted, the *Wikipedia* screenshots, however, related to [redacted] rather than to the specific advertising campaign involving the Beneficiary. We found that without further supporting documentation, the Petitioner did not demonstrate that the photographs reflect the Beneficiary's leading or starring participation for the [redacted] print advertising campaign, or that the particular [redacted] advertisement generated a distinguished reputation.

On motion, the Petitioner does not identify any specific error of law or policy in our appellate decision regarding the Beneficiary's past services in productions or events. Instead, the Petitioner asks us to consider letters in the record from [redacted] and [redacted] regarding the Beneficiary's acting roles, respectively, in a music video for [redacted], a Ukrainian band, and as '[redacted] in the short film [redacted] The Petitioner did not previously claim eligibility under this criterion based on these roles, and it does not argue that we overlooked such a claim in our prior decision. The authors of the letters provide insufficient information to show the prominence of the roles to be leading or starring for those productions or the distinguished reputations of those productions. Regardless, the regulation requires critical reviews, advertisements, publicity releases, publications, contracts, or endorsements establishing the Beneficiary's eligibility under this criterion. Our appellate decision found that the Petitioner has not submitted such evidence with respect to the Beneficiary's past projects, as previously discussed.

With regard to the prospective element of this criterion, we noted that the Petitioner submitted a "Deal Memo" between [redacted] and the Beneficiary and screenshots from YouTube of an interview between [redacted] and the Beneficiary.[3] This evidence, however, occurred after the initial filing of the petition. Accordingly, we did not consider this evidence. On motion, the Petitioner maintains that these items satisfy this criterion. It does not acknowledge our determination that it cannot rely on the "Deal Memo" and YouTube interview, both of which occurred in 2020, to establish the Beneficiary's eligibility at the time of filing this petition in December 2019. Again, we emphasize that a petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

Our appellate decision also noted that the Petitioner referenced a previously submitted contract

[3] In our appellate decision we also noted that in its brief, the Petitioner provided a partial, uncertified translation of the interview without submitting the original transcription. We explained that any document in a foreign language must be accompanied by a full English language translation. *See* 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id*. We found that because the Petitioner did not submit an original transcription and a properly certified full English language translation of the material, the Petitioner did not show that the material is accurate and thus supports its claims. Although on motion, the Petitioner provides a partial certified translation of the interview and a partial original transcription, the Petition has not provided a full English language translation and original transcription of the interview.

between [redacted] and the Beneficiary reflecting that she "will have the lead role in a production that tells the story of [redacted] young woman that came from a [redacted] family." We found that although the evidence indicates the Beneficiary's leading role, the Petitioner did not demonstrate that the production or television series has a distinguished reputation. For instance, the evidence does not show the prestigious nature or eminent standing of the television production. The Petitioner does not identify any specific error of law or policy in our appellate decision relating to the prospective element of this criterion.

On motion, the Petitioner makes those same arguments it made in its appellate brief and restates and describes the evidence it submitted under this criterion. 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. *See Matter of* O-S-G-, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). Furthermore, our decision analyzed and explained why the evidence and arguments addressed in the appeal did not meet the regulatory requirements. Here, the Petitioner did not demonstrate that we erred in either misapplying law or policy or failing to address prior arguments or evidence.

For the reasons discussed, the Petitioner has not established that our prior determination with respect to this criterion was based on a misapplication of law or USCIS policy.

> *Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*).

Our appellate decision noted that the Petitioner argued that the Beneficiary satisfies this criterion based on her work on [redacted], [redacted], [redacted] and [redacted]; as a unionized actress; through testimonial letters; and in a music video from [redacted] We found that the Petitioner did not reference "critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications." Instead, the Petitioner cited to documentation confirming the Beneficiary's participation and involvement in various events. We concluded that without the regulatory requirement of evidence of critical reviews or other published materials in major newspapers, trade journals, magazines, or other publications, the Petitioner did not establish that the Beneficiary meets this criterion. We noted, regarding the aforementioned two articles from *Contigo* and *Risa* and photographs from *Quem*, that neither the articles nor the photographs reflect critical reviews of the Beneficiary representing national or international recognition for her achievements. We found that the material does not show what the Beneficiary achieved through her performances, and the Petitioner did not show how the two magazine articles and magazine photographs establish that the Beneficiary has received national or international recognition. On motion, although the Petitioner states the identical claims it made in its appellate brief, it has not shown that our determination for this criterion was incorrect.

For the reasons discussed, the Petitioner has not demonstrated that we misapplied the law or USCIS policy in concluding that it did not meet this criterion or that our decision was incorrect based on the evidence in the record at the time of our decision.

> *Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*).

In our appellate decision, we addressed the Petitioner's argument that the Beneficiary "starred in several major advertising campaigns" for [redacted] We found that, although the Petitioner provided still shots and photographs of the advertising campaigns, the Petitioner did not demonstrate that the Beneficiary performed in a lead, starring, or critical role for organizations or establishments through the required evidence of "articles in newspapers, trade journals, publications, or testimonials." We determined, moreover, that the Petitioner did not explain how participating in advertising campaigns also shows the Beneficiary's leading, starring, or critical roles for the overall organizations or establishments. We further concluded that, besides [redacted] the Petitioner did not establish that the organizations and establishments have a distinguished reputation through the required regulatory evidence.

As it relates to the prospective element of this criterion, although our prior decision noted that the Petitioner referenced the "Deal Memo" and YouTube interview previously discussed, we found that as this evidence occurred after the filing of the initial petition, we would not consider these claims. On motion, the Petitioner maintains that these items satisfy this criterion. However, it does not acknowledge our determination that it cannot rely on the "Deal Memo" and YouTube interview, both of which occurred in 2020, to establish the Beneficiary's eligibility at the time of filing this petition in December 2019. Again, we emphasize that a petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

Our appellate decision noted that the Petitioner also asserted eligibility based on the [redacted] contract for the Beneficiary to perform in the television series, [redacted] We found, however, that the Petitioner did not show how the contract qualifies as "articles in newspapers, trade journals, publications, or testimonials" consistent with this regulatory criterion. In addition, we determined that the Petitioner did not demonstrate how the Beneficiary's performance as an actress in a television series corresponds to her leading, starring, or critical role for [redacted] We further found that the Petitioner did not establish that [redacted] enjoys a distinguished reputation through the required regulatory evidence.

On motion, the Petitioner the has not demonstrated that we erred in either misapplying law or policy or failing to address prior arguments or evidence in our determination that the Petitioner has not demonstrated, by articles in newspapers, trade journals, publications, or testimonials, that the Beneficiary has performed and will perform, in a lead, starring, or critical role for the aforementioned establishments or their distinguished reputation. For the foregoing reasons, the Petitioner has not established that our prior determination with respect to this criterion was based on a misapplication of law or USCIS policy.

> *Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*4*).

On motion, the Petitioner maintains that the Beneficiary meets this criterion based on "several major advertising campaigns in [redacted]." However, it does not acknowledge our prior determination not to consider this claim in our adjudication of the appeal, as the Petitioner did not claim the Beneficiary's eligibility for this criterion before the Director, either at the time it filed the petition or in response to the Director's request for evidence (RFE). *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]

IV. CONCLUSION

The Petitioner has not established that our previous 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. Accordingly, the motion to reconsider will be dismissed.

ORDER: The motion to reconsider is dismissed.

[4] As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria, we reserve a determination on the remaining two criteria. *See Bagamasbad*, 429 U.S. 25-26 (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).