U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18475188

Date: AUG. 09, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a country club, employs the Beneficiary as a tennis director. It seeks to extend the Beneficiary's classification as an O-1 nonimmigrant, a visa classification available individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability in athletics, either a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). We dismissed the Petitioner's subsequent appeal. The matter is now before us on a motion to reopen and 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 motions.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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]

II. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, 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 define "extraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

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 sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[2]

III. ANALYSIS

The issue before us is whether the Petitioner has presented new facts to warrant reopening its appeal and/or 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 our appellate decision we noted that, although the Petitioner seeks to extend the Beneficiary's O-1 nonimmigrant classification through evidentiary criteria for individuals of extraordinary ability in the

[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." 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."

field of athletics under 8 C.F.R. 214.2(o)(3)(iii)(B),[3] that from initial filing of the petition and continuing through the appeal, the Petitioner claimed the Beneficiary's eligibility relating to other nonimmigrant and immigrant classifications. Specifically, at initial filing and in response to the Director's request for evidence (RFE), the Petitioner asserted that the Beneficiary satisfied "[e]vidence that the alien has achieved national and international recognition for achievements evidenced by published materials by or about the individual in major newspapers, trade journals, magazines, or other publications pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B)(3)."[4] We explained that, on the contrary, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) actually provides "[p]ublished material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation." We also noted that the Petitioner referenced regulatory language applicable to individuals of extraordinary ability in the arts – 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), a separate and distinct nonimmigrant classification.[5]

The Director determined that the Petitioner demonstrated the Beneficiary's eligibility for only one criterion – critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).[6] Our prior decision mentioned that on appeal, the Petitioner argued that the Beneficiary meets eight categories of evidence, some of which relate to the immigrant classification for individuals of extraordinary ability under 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, the Petitioner contended that the Beneficiary meets the display criterion at 8 C.F.R. § 204.5(h)(3)(vii) and leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). In addition, the Petitioner referenced relating nonimmigrant and immigrant regulatory categories, such as "Category #1: Receipt of lesser nationally and internationally recognized prizes or awards for excellence in the field of endeavor. (O-1 and EB-1 category)." We determined that, because this proceeding is based on the Petitioner seeking nonimmigrant classification for the Beneficiary as an individual of extraordinary ability in athletics under 8 C.F.R. § 214.2(o)(3)(iii), our appellate decision would only consider those applicable arguments and decline to reach determinations on irrelevant eligibility claims.

Our appellate decision further noted that the Petitioner made additional eligibility claims and presented new evidence that were never argued or presented before the Director in this proceeding. Specifically, for the first time on appeal, the Petitioner contended that the Beneficiary fulfills the criteria relating to judging under 8 C.F.R. § 214.2(o)(3)(iii)(B)(4) and high salary under 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). We determined that we would not consider new eligibility claims or evidence 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*

[3] We found that the Petitioner did not claim, nor did the record reflect, that the Beneficiary received a major, internationally recognized award under 8 C.F.R. § 214.2(o)(3)(iii)(A).

[4] We noted that at initial filing, the Petitioner also asserted the Beneficiary's eligibility for original contributions under 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) and critical or essential capacity under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). In the RFE response, the Petitioner made additional claims of the Beneficiary's eligibility for awards under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) and memberships under 8 C.F.R. § 214.2(o)(3)(iii)(B)(2)

[5] We explained that the Director ultimately considered the evidence as it related to 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

[6] We noted that the Director indicated that the Petitioner did not claim the Beneficiary's eligibility for the judging criterion under 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), scholarly articles under 8 C.F.R. § 214.2(o)(3)(iii)(B)(6), and high salary under 8 C.F.R. § 214.2(o)(3)(iii)(B)(8), and we found that the record supports that determination.

of Obaigbena, 19 I&N Dec 533 (BIA 1988).[7] 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*). Further, we reserved a determination on the criterion related to original contributions at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*), 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. Motions

On motion, the Petitioner asserts that we incorrectly determined that the previously submitted evidence was insufficient to establish that the Beneficiary meets the requirements of at least three criteria. We address its specific claims below.[8]

> *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*).

In our appellate decision, we discussed the Petitioner's contention that the Beneficiary enjoyed collegiate success while attending [redacted] State University.[9] We noted, for example, that the Petitioner indicated that the Beneficiary achieved: Intercollegiate Tennis Association (ITA) [redacted] Rookie of the Year Award, four-time [redacted], ranked number one in [redacted] Doubles for two straight years, [redacted] Men's All-Conference Tennis Award, ITA 2002 [redacted] National Championship Finalist, 2003 [redacted] Senior Player of the Year, [redacted] State University's [redacted] 2002-2003 [redacted] Award, and national doubles champion at the 1999 [redacted] of Small College Tennis. We explained that the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) requires that the Petitioner to not only demonstrate that the Beneficiary received prizes or awards but establish that those prizes or awards are nationally or internationally recognized for excellence in the field. We found that although the Petitioner submitted general information relating to the NCAA, ITA, GLIAC, FSU and collegiate tennis, none of the documentation addresses the Beneficiary's specific awards or achievements, let

---

[7] We noted that the Director's RFE informed the Petitioner that it did not submit any evidence for these criteria and provided possible examples or types of documentation that could be submitted in response.

[8] On motion, the Petitioner does not contest our determination that it did not submit evidence that satisfies the published material criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*). Therefore, we deem this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009); *see also See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

[9] The Petitioner also previously claimed eligibility under this criterion based on winning the Men's Tennis Pro-Am at [redacted] (2007), being part of a team that won the [redacted] Championship and placed second at the United States Tennis Association (USTA) [redacted] championship (2012), and teaming with [redacted] to win the [redacted] Championship, the [redacted] Championship, and placing 11th at [redacted] We determined that, although the Petitioner referenced letters from [redacted] director of tennis at [redacted] and [redacted] who summarized some of the Beneficiary's achievements and commented on his skills, the letters do not contain specific, detailed information explaining how the Beneficiary's local, state, and regional accomplishments reflect nationally or internationally recognized prizes or awards for excellence in the field. The Petitioner has not pursued these claims on motion.

alone shows their national or international recognition for excellence in the field. Our decision also noted that the Petitioner referenced a recommendation letter from [redacted] former head coach at [redacted] who stated that the Beneficiary "was a four-time [redacted] and "was also the tennis team [redacted] for three years and First Team All-Conference in singles and doubles each year he was there." We found that [redacted]'s letter did not discuss the significance of these collegiate athletic honors in the field or show how they represent nationally or internationally recognized prizes or awards for excellence consistent with this regulatory criterion.[10]

On motion, the Petitioner asserts that we "failed to properly credit the Beneficiary's extraordinary achievements" in the [redacted] "despite evidence showing not only the significance of the [redacted] athletics but also the significance of the Beneficiary's achievements." The Petitioner does not address how we misapplied the law or USCIS policy in determining that the evidence did not establish that the Beneficiary's aforementioned collegiate athletic honors represent nationally or internationally recognized prizes or awards for excellence as required by this criterion. 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.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*).

Our appellate decision noted that the Petitioner claimed that the Beneficiary fulfills this criterion based on being a certified [redacted] of the United States Professional Tennis Association (USPTA), and referenced a letter from [redacted] USPTA, who stated that "[fo]r the [redacted] . . the applicant must be a USPTA member at least 22 years old; must pass the [redacted] written exam, which covers business, programming, sport science and tennis operations; must

[10] Our prior decision also noted that on appeal, the Petitioner argued under this criterion that the Beneficiary "began his long and distinguished career as a top-ranked [redacted]" "[i]n 1996, he was ranked No. 47 in the [redacted] Rankings, as compiled by the [redacted]" and "[t]he recognition and inclusion in these rankings is the embodiment of international recognition and achievement," and submitted a document for the 1996 [redacted] Ranking[s]" for [redacted] Doubles." We noted, however, the Petitioner did not claim the Beneficiary's [redacted] double rankings before the Director, and the Petitioner did not provide the Director with this evidence at either at the time of initial filing or in response to the RFE. Accordingly, we determined we would not consider this additional claim and supporting evidence in our adjudication of this appeal. *See Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec at 533. Regardless, we noted that the Petitioner did not demonstrate how rankings equate to prizes or awards, nor did the Petitioner supplement the record with evidence showing their national or international recognition for excellence in the field.

pass the [redacted] stroke analysis exam; and perform on the on-court exams at the [redacted] level." Our decision explained that in order to meet this criterion, the Petitioner must establish the Beneficiary's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts. We determined that the Petitioner did not demonstrate how such age and examination requirements are tantamount to outstanding achievements. We found that the Petitioner did not show that [redacted] status is reserved to those who have demonstrated outstanding achievements rather than for those who attained a minimum age and passed examinations. We further determined that [redacted]'s letter does not indicate whether recognized national or international experts judge the outstanding achievements for membership, as required by the regulation.

On motion, the Petitioner asserts that we dismissed [redacted]'s "attestation of the significance of the [redacted] designation" and that "[i]f the testimonial evidence of the top person and the top organization in the field is insufficient to establish the significance and ability of the Beneficiary to satisfy the criterion of membership in associations . . . then USCIS has set an impossible standard." Rather than dismiss [redacted]'s letter, however, our decision analyzed and explained why that evidence did not meet the regulatory requirements. As noted in our prior decision, the issue for this criterion is whether membership is based on outstanding achievements, as judged by recognized national or international experts. We determined that the statement of [redacted] did not show that [redacted] status is reserved to those who have demonstrated outstanding achievements and, further, did not address all elements of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*) as it did not indicate whether membership is judged by recognized national or international experts in their fields.

On motion, the Petitioner also asserts that we "dismissed the significance" of the Beneficiary's certification as a "Master Racquet Technician" (MRT) with the United States Racquet Stringers Association (USRSA), "despite the letter from [redacted] president of the USRSA explaining the significance and requirements for certification and testimonial evidence from a top ranked international tennis professional and articles attesting to the significance of the MRT certification ...." Our appellate decision found that, although the Petitioner argued about the "significance of the MRT certification" and the "importance of the racquet stringing industry," the issue for this criterion is whether membership is based on outstanding achievements, as judged by recognized national or international experts. We determined that the Petitioner did not show that MRT certification requires outstanding achievements, and that those outstanding achievements are judged by recognized national or international experts. We acknowledged that the Petitioner referenced a letter from [redacted] who stated that "[t]hese certifications require extensive testing including both a written exam and practical, hands-on skills set." We found, however, that [redacted] did not further elaborate and demonstrate how extensive testing is analogous to an outstanding achievement. Moreover, we determined that MRT membership is based on passing examinations rather than by being judged for outstanding achievements by nationally or internationally recognized experts.

Similarly, we discussed the Petitioner's contention that "the combination of [certifications as a USPTA [redacted] and USRSA MRT] makes [the Beneficiary] truly extraordinary in the tennis profession" and its citation to a letter from [redacted], director of racquet sports at [redacted] who commented that the Beneficiary's two certifications "offer a greater level of expertise to his customers and business." We determined, however, that the Petitioner did not show how combining [redacted] and MRT certification satisfies the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2),

and neither one requires outstanding achievements, as judged by recognized national or international experts, as an essential condition for membership.

Further, on motion the Petitioner asserts that we "failed to consider that the [B]eneficiary has been a member of the [redacted] for years." However, it does not acknowledge our prior determination not to consider this claim in our adjudication of the appeal, as the Petitioner did not make this claim of eligibility for this evidentiary criterion before the Director, either at the time it filed the petition or in response to the Director's request for evidence (RFE). *See Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533. [11]

On motion, the Petitioner has not demonstrated that we erred in either misapplying law or policy or failing to address prior arguments or evidence in our determination that it has not shown that the above organizations require outstanding achievements as a necessary condition of membership and that recognized national or international experts are charged with judging whether a prospective member satisfies the organization's membership requirements.

For the foregoing reasons, the Petitioner has not established that our prior determination with respect to the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*) was based on a misapplication of law or USCIS policy.

Finally, on motion the Petitioner cites to retired USCIS *Adjudicator's Field Manual* Chapter 22.2,[12] relating to evaluating extraordinary ability immigrant petitions filed on behalf of persons who have previously been classified as O-1 nonimmigrants, asserting that "[d]ismissing the appeal and finding that the Beneficiary does not merit classification under the O-1 category is also contrary to USCIS' determination that the Beneficiary meets the criteria for the higher standard under the employment-first preference." It also provides a copy of the Form I-797, Notice of Action, previously submitted into the record, showing that the Beneficiary in this matter is also the Beneficiary of an approved extraordinary ability immigrant petition, filed by the Petitioner and approved during the pendency of the present appeal. Because the Petitioner did not previously assert this claim, we did not err by failing to consider it. [13]

IV. CONCLUSION

The Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. The combined motion to reopen and reconsider will be dismissed for these reasons.

---

[11] Similarly, we determined that we would not consider the Beneficiary's USTA certification as a [redacted] coach, as the Petitioner did not make this claim of eligibility for this evidentiary criterion in its initial filing or after the Director afforded it an opportunity in an RFE.

[12] We note that the guidance found in the retired AFM Chapter 22 has been replaced by policy guidance issued in the USCIS Policy Manual. *See* 6 *USCIS Policy Manual* F.2(B)(2), retired *Adjudicator's Field Manual* Chapter 22.2, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

[13] Nonetheless, that guidance does not support the assertion that an approval of an immigrant visa petition mandates the approval of a similar nonimmigrant visa petition, as it affirms, as noted by the Petitioner, that each case must be decided on a case-by-case basis based on its own merits under the corresponding statutory and regulatory provisions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.