U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-F-

DATE: DEC. 5, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an agent, seeks to represent the Beneficiary during his temporary employment in the United States as a professional photographer. To do so, the Petitioner seeks O-1 nonimmigrant visa classification, available to foreign nationals 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 California Service Center denied the petition, concluding that the Petitioner did not satisfy the evidentiary criteria applicable to individuals of extraordinary ability in the arts, either a significant national or international award or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). The Petitioner appealed the matter to us, and we dismissed the appeal.[1]

The matter is now before us on a motion to reconsider. With the motion, the Petitioner submits a letter from the Beneficiary, asserting that he is eligible for O-1 classification. Upon review, we will deny the motion.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

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 which 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 arts" as "distinction," and "distinction" as "a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that

[1] *See Matter of C-F-*, ID# 327618 (AAO June 1, 2017).

ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts." 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 nomination for or receipt of "significant national or international awards or prizes" such as "an Academy Award, an Emmy, a Grammy, or a Director's Guild Award," or of at least three of six listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(C).

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). In *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), we held that, "truth is to be determined not by the quantity of evidence alone but by its quality." That decision explains that, pursuant to the preponderance of the evidence standard, we "must 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." *Id.* Accordingly, where a petitioner provides qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iv), we will determine whether the totality of the record shows eligibility under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii).

II. ANALYSIS

For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. As the Petitioner has not indicated or established that the Beneficiary has received a significant national or international award or prize like the Academy Award, she must demonstrate that he satisfies at least three of the six regulatory criteria at 8 C.F.R § 214.2(o)(3)(iv)(B)(*1*)-(*6*). In dismissing the appeal, we found that the exhibits did not satisfy the following contested criteria: leading or starring participant in distinguished productions or events under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*); leading, starting, or critical roles in distinguished organizations or establishments under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*); recognition for achievements evidenced by critical reviews or published material under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*); and significant recognition for achievements from organizations, critics, government agencies, or other recognized experts under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*).

On motion, the Petitioner does not specifically address our findings under the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*3*) and (*5*). Instead, in an accompanying letter, the Beneficiary asserts that he has "become more than a common photographer." He indicates that he has "photographed not only [redacted] of Argentina but also [redacted] of Paraguay." In addition, the Beneficiary states that he "covered a [redacted] in Paraguay" and "photographed official functions of the [redacted] court and the [redacted] of Paraguay." He further contends that he presented a video of his pictures at [redacted] and served as

lead photographer of both the [redacted] and the [redacted] Lastly, the Beneficiary notes that he owns a "wedding photography and social events studio in Argentina." The Petitioner's motion, however, does not explain how our appellate findings were based on an incorrect application of law or policy. Rather, the Beneficiary's letter provided on motion mirrors the letter he offered in support of the appeal.

The information in the Beneficiary's latest letter was properly considered in our appellate decision. On appeal, we conducted a *de novo* review of the record and ultimately concluded that the Beneficiary did not satisfy at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B) or meet the comparable evidence requirements at 8 C.F.R. § 214.2(o)(3)(iv)(C). The Beneficiary's statements do not establish that our appellate findings were based on an incorrect application of the law, regulation, or DHS policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision. Therefore, the Petitioner has not met the requirements of a motion to reconsider.

III. CONCLUSION

The Petitioner's motion does not demonstrate that our previous decision was incorrect, and it does not establish that the Beneficiary qualifies as an individual of extraordinary ability.

ORDER: The motion to reconsider is denied.

Cite as *Matter of C-F-*, ID# 769399 (AAO Dec. 5, 2017)