U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12621622

Date: FEB. 26, 2021

Motion on Administrate Appeals Office Decision

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

The Petitioner, an entertainment agent, seeks to classify the Beneficiary, a musician, as an O-1 nonimmigrant, a 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.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international or award, or at least three of the six possible forms of documentation. We subsequently dismissed the Petitioner's appeal.[1]

The matter is now before us on a motion to reconsider. Upon review, we will deny the motion.

I. 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 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 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 initial 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 at least three of six listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

[1] See In Re: 8066397 (Apr. 14, 2020).

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 ability in the arts. See section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iv).[2]

Further, 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. BACKGROUND

The Director determined that the Petitioner established that the Beneficiary met only one of the six evidentiary criteria, relating to significant recognition for achievements at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). On appeal, we withdrew the Director's decision regarding the significant recognition for achievements criterion and determined that the Petitioner did not demonstrate that the Beneficiary satisfied any criteria. On motion, the Petitioner contends that the Beneficiary fulfills four criteria.[3]

III. ANALYSIS

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). On motion, the Petitioner argues the Beneficiary's eligibility relating to four criteria without demonstrating how we erroneously applied law or policy in our prior decision. In addressing the four claimed criteria, the Petitioner does not even mention our decision or specifically contest our determinations. Instead, the Petitioner's brief practically mirrors the initial cover letter, the response to the Director's request for evidence (RFE), and the appellate brief and provides previously submitted evidence that we already addressed in 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). In fact, the Petitioner's brief appears to respond to the Director's RFE and decision rather than to our decision dismissing the appeal.

As we previously and thoroughly addressed the same motion arguments in our prior decision and the Petitioner presents no new arguments showing that we erroneously applied law or policy, the Petitioner

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[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."

[3] The Petitioner contends that the Beneficiary meets the following four criteria: lead or starring participant in productions or events at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), lead, starring, or critical role for organizations or establishments at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), major commercial or critically acclaimed successes at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4), and significant recognition for achievements at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

did not establish that the motion meets the regulatory requirements. Therefore, we will deny the motion to reconsider.

IV. CONCLUSION

The Petitioner has not shown that our previous decision dismissing the appeal was incorrect based on the record before us.

ORDER: The motion to reconsider is denied.