U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38885358

Date: JUL. 07, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a vocalist and musician, seeks to continue her career as a singer and musical therapist in the United States. She seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with "exceptional ability." *See* Immigration and Nationality Act (the Act) section 203(b)(l)(A), 8 U.S.C. § 1153(b)(l)(A). Self-petitioners for U.S. permanent residence in this category must demonstrate the individuals' "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

Service Center Operations (SCOPS) denied the petition, concluding that the Petitioner did not establish that she met the requirements for an alien of extraordinary ability. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). A motion to reconsider must establish that our prior 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner reiterates the arguments made on appeal. In particular, she argues that [redacted] is a premier event in Belarus with national recognition and that winning the event satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(i). The Petitioner has not provided sufficient evidence, on motion, to establish that [redacted] is a nationally or internationally recognized award. As stated in our prior decision, the event appears to have been held in restaurants and bars rather than large music venues, and the Petitioner has not established that the claimed 20,000 attendees is of

sufficient size and scope to warrant national or international recognition. Moreover, the materials submitted on motion confirm that the competition is judged by the audience and not by a jury of experts in the musical field. Therefore, the evidence does not establish that we erred in our prior decision or that the Petitioner has met this criterion.

As it relates to 8 C.F.R. § 204.5(h)(3)(ii) relating to membership, the Petitioner argues that we erred in determining that her membership in the [redacted] does not meet this criterion. In our prior decision, we discussed, at length, why the Petitioner's membership in the [redacted] did not meet this criterion. Specifically, we stated that the Petitioner had not established that decisions on membership are made by national or international experts in the field of music. We also stated that the charter of the [redacted] did not require evidence of outstanding achievement in the field of music for membership, and that the "honorary diploma" from the [redacted] is not evidence that the organization requires outstanding achievement in the field of music for membership. On motion, the Petitioner re-iterates the claims made on appeal, highlighting the pan-cultural nature of the league and the "rigorous" review process for members. While we do not disagree that the [redacted] appears to encompass a broad range of cultural and business areas, the plain text of the regulation requires that membership be awarded specifically for outstanding achievement in a petitioner's field as adjudged by experts in her specific field of endeavor. Therefore, the Petitioner has not established that we erred in our prior decision or that she has satisfied this requirement.

The Petitioner argues on motion that we did not properly consider the [redacted] magazine article from [redacted] 2022 as a major media publication under 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner again argues that the magazine has a broad cultural audience and should be considered as a national publication based on its 62 member organizations throughout the country. The Petitioner argues that our focus on circulation statistics is overly strict and imposes a novel evidentiary standard. In evaluating whether a submitted publication is a professional, major trade publication or major media, relevant factors include the intended audience and the relative circulation, readership or viewership. 6 *USCIS Policy Manual* F.2(B)(1) www.uscis.gov/policy-manual. The Petitioner has provided no additional data regarding circulation, intended audience, or readership of either [redacted] or the [redacted] magazine on motion. Therefore, she has not established that the articles presented meet the plain text of the regulation.

As it relates to evidence of critical or leading role in a distinguished organization under 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner argues that our appeal decision did not appropriately consider her band's distinguished reputation or her crucial role in [redacted] a Belarussian multi-purpose venue, and the [redacted] project. This regulatory criterion requires the organization or establishment, or the department or division for which the person holds or held a leading or critical role, to have a distinguished reputation.[1] *Meriam-Webster's* online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person."[2] The Petitioner provided screenshots from her band's website, a letter from the deputy director of the [redacted] and a support letter from N-K-, a children's content creator and author responsible for the [redacted] series. However, the Petitioner did not submit evidence from any third-party

[1] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[2] *Id.*

organizations or individuals supporting her contentions that these organizations are distinguished or held in high regard compared to others in their field. *See Cuckic v. Jaddou*, No. 21-CV-8395 (JPO), 2023 WL 2586031, at *5 (S.D.N.Y. Mar. 21, 2023) (finding self-promotional material from the organization did not establish a sufficiently high reputation). Therefore, this criterion has not been met.

Lastly, the Petitioner argues that she has established commercial success under 8 C.F.R. § 204.5(h)(3)(x). The Petitioner argues that the evidence related to the concerts she performed at The [redacted] as well as the release of her solo album is sufficient to establish her claimed commercial success. The letter from the deputy managing director of the [redacted] did not contain sufficient detail to establish the size of the audience for the Petitioner's performances. The letter did not discuss the difference between the Petitioner's ticket sales and others who perform at the venue. The Petitioner must submit evidence to demonstrate that the volume of sales or box office receipts demonstrates commercial success relative to others in her field. The Petitioner did not submit sufficient evidence of box office receipts or the sale of her album to meet this criterion. The mere act of performing in a venue or publishing music is not indicative of commercial success. Moreover, she did not submit any comparative evidence of similar bands or vocalists to demonstrate that she has achieved commercial success indicative of sustained national or international acclaim. Therefore, she has not met this criterion.

Because the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), detailed discussion of the claimed criterion at 8 C.F.R. § 204.5(h)(3)(v) cannot change the outcome of the motion. Accordingly, we need not reach, and therefore reserve, this remaining criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.