U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-L-A-S-W-S-, INC.

DATE: OCT. 23, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a dance studio, seeks to classify the Beneficiary as an individual of extraordinary ability in athletics. This O-1 classification makes nonimmigrant visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Vermont Service Center denied the petition, finding that the Petitioner had not satisfied the evidentiary requirements applicable to individuals of extraordinary ability in athletics. We dismissed the Petitioner's subsequent appeal on the same basis.[1] The matter is now before us on a motion to reopen and a motion to reconsider. Upon review, we will deny the motions.

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 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 to work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "[e]xtraordinary 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 the evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner must submit evidence either 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)(iii)(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)(iii)(C). When a petitioner provides the requisite evidence, we then

[1] *See Matter of D-L-A-S-W-S-, Inc.*, ID# 186399 (AAO Mar. 23, 2017).

determine whether the record, viewed in its totality, shows sustained national or international acclaim such that the individual is prominent in the field of endeavor.

In addition, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and 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 demonstrated the Beneficiary's eligibility for only one of the regulatory criteria – judging under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*) – of which he must meet at least three. On appeal, we found that the Petitioner did not establish that the Beneficiary satisfied the following contested criteria: awards under 8 C.F.R.§ 214.2(o)(3)(iii)(B)(*1*), memberships under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*), published material under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*), original contributions under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*), critical or essential capacity under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*), and high salary under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*).

III. ANALYSIS

A. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board of Immigration Appeals' (the Board) definition of "new" at 8 C.F.R. § 1003.23(b)(3) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

On motion, the Petitioner presents a cover letter, a brief, a copy of the Director's decision, and a copy of our decision. In the cover letter, the Petitioner states that "[a] brief and additional evidence is attached." The Petitioner, however, does not provide "additional evidence" in support of the motion. In addition, the Petitioner's motion brief does not reference or discuss any new documentary evidence or facts. Because the Petitioner does not offer "new facts" supported by documentary evidence, the instant filing does not meet the requirements of a motion to reopen.

B. Motion to Reconsider

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). In addition, a motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or DHS. Here, the Petitioner does not argue on motion that our decision was based on an incorrect application of law or policy. Rather, the motion brief mirrors the previously submitted appellate brief. Specifically, the Petitioner contends that the Director abused her discretion in denying the petition, and that she applied an incorrect standard of review. On appeal, we conducted a *de novo* review of the record and ultimately concluded that the Petitioner did not satisfy at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). The Petitioner's brief on motion does not contest or mention our decision. Further, the Petitioner does not support the motion with relevant precedent decisions to demonstrate that we misapplied law or policy. For these reasons, the Petitioner does not satisfy the requirements of a motion to reconsider.

IV. CONCLUSION

The Petitioner has not offered new facts demonstrating eligibility for the benefit sought, nor has the Petitioner established that our previous decision was incorrect.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of D-L-A-S-W-S-, Inc.*, ID# 696813 (AAO Oct. 23, 2017)