U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9594554

Date: SEPT. 24, 2020

Motion on Administrate Appeals Office Decision

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

The Petitioner, a taekwondo school, seeks to extend the Beneficiary's classification 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.[1]

The Director of the Vermont Service Center (VSC) denied the petition, concluding that the Beneficiary 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. We subsequently dismissed the Petitioner's appeal.[2]

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 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).

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[1] The Petitioner seeks to continue to employ the Beneficiary as a taekwondo headmaster.

[2] *See Matter of P-G-T- Inc.*, ID# 4426688 (AAO Oct. 16, 2019).

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).[3]

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 record reflects that the Beneficiary initially received O-1 nonimmigrant classification in 2002,[4] along with ten extensions of his status from 2004 to 2018.[5] However, the Director determined in the Petitioner's last extension request that it did not establish that the Beneficiary received a major, internationally recognized award or satisfied any of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8) as an athlete, instructor, or both. Specifically, the Director concluded the Petitioner provided evidence relating to four categories of evidence: awards under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*), memberships under 8 C.F.R. § 214.2(o)(3)(B)(iii)(*2*), published material under 8 C.F.R. § 214.2(o)(3)(B)(iii)(*3*), and judging under 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), but the Beneficiary did not meet any of them.

On appeal, the Petitioner argued that the Director denied its petition "after reviewing the case based on the recently published memorandum" that "rescinded the guidance regarding deference to prior approvals of petitions for extension of nonimmigrant status." However, we determined that the Director properly followed policy guidance, reviewed the record and evidence, and found the Petitioner's documentation insufficient to demonstrate the Beneficiary's eligibility.[6] In addition, the Petitioner claimed that "[i]t is unreasonable to expect an applicant to receive a major, internationally-recognized award on a regular basis in between the O-1 extensions." We concluded that the Director's decision did not indicate that she required the Beneficiary to receive major, internationally recognized awards between extensions, as alleged by the Petitioner. Instead, as indicated in her decision, the Director explained that since the Petitioner did not claim that the Beneficiary received a major, internationally recognized award, such as a Nobel Prize, it must show that he satisfied at least three of the eight evidentiary criteria. Further, although the Petitioner did not contest the Director's evidentiary criteria determinations, we reviewed the record and discussed each of the four claimed criteria and decided that the Beneficiary did not fulfill any of them.

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[3] *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."

[4] *See* [redacted] with a validity period from November 9, 2002 to July 1, 2004.

[5] *See* [redacted] with a validity period from July 2, 2015 to July 1, 2018, for the most recent extension approval.

[6] *See* USCIS Policy Memorandum PM 602-0151, *Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status*, 3 (Oct. 23, 2017),

III. ANALYSIS

A. Jurisdiction

In Part 2 of Form I-290B, Notice of Appeal or Motion, the Petitioner indicates the filing of the motion to reconsider the decision of the "Vermont Service Center" on November 21, 2018. However, we dismissed the appeal on October 16, 2019. The official having jurisdiction is the official who made the latest decision in the proceeding. *See* 8 C.F.R. § 103.5(a)(1)(ii). In this case, we maintain jurisdiction of the motion as the latest decision involved dismissing the appeal.

B. Judicial Proceeding Statement

The regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires the motion to be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceedings and, if so, the court, nature, date, and status or result of the proceeding." The Petitioner, however, did not include the required statement. Therefore, the Petitioner's motion does not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

C. Motion to Reconsider

On motion, the Petitioner contends:

> VSC denied the instant O-1 petition based on the reasoning that the beneficiary has failed to sustain his international acclaim in the sport of taekwondo. We agree with the VSC's analysis in part at its principled application to the new memo, however, we believe the instant petition should have been afforded a degree of favorable discretionary consideration pursuant to the same memo that the decision was based on.
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> [The Petitioner's] previous O-1 petitions on behalf of [the Beneficiary] have always been based on true and accurate records and all of the submitted materials have always been meritorious. There were no material errors in prior adjudications. In addition, [the Beneficiary] has always been a model citizen of his community who has never committed any crimes nor ever violated the terms of his non-immigrant status. Utilizing his unique knowledge and experience grained from world class competitions, [the Beneficiary] has been focused on enriching the students' minds with discipline and moral righteousness while at the same time improving their physical conditions through practice of taekwondo.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or

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http://www.uscis.gov/legal-resources/policy-memoranda (providing that an adjudicator's fact-finding authority should not be constrained by any prior petition approval, but instead, should be based on the merits of each case).

Service policy. 8 C.F.R. § 103.5(a)(3). Here, the Petitioner makes arguments referring to VSC's decision rather than our latest decision dismissing the appeal. In fact, the Petitioner does not mention or contest our decision. Although the Petitioner claims that the "petition should have been afforded a favorable consideration through VSC's discretion in the name of fairness and justice," we reviewed the record and concluded that the Director properly followed policy guidance regarding prior adjudications. Further, we discussed the Petitioner's documentation providing an analysis for each of the claimed four criteria.

Regardless of prior O-1 nonimmigrant approvals, the Petitioner did not show that the Beneficiary satisfied at least three categories of evidence. The Petitioner does not address or contest this determination. Further, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000) (providing that we are not bound by prior decisions of a service center or district director).

As the Petitioner did not demonstrate that we erroneously applied law or policy, the Petitioner 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.