U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22458706

Date: NOV. 4, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for Nonimmigrant Worker (Athlete, Artist, or Entertainer – P)

The Petitioner, a boxing promotional and management company, seeks to extend the Beneficiary's classification as an internationally recognized athlete. *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(P)(i)(a), 8 U.S.C. § 1101(a)(15)(P)(i)(a). This P-1 classification makes nonimmigrant visas available to certain high performing athletes and coaches. Sections 204(i)(2) and 214(c)(4)(A) of the Act, 8 U.S.C. §§ 1154(i)(2), 1184(c)(4)(A).

The Director of the California Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary was coming to the United States solely to participate in distinguished competitions that require an athlete with an international reputation. *See* Sections 101(a)(15)(P)(i) and 214(c)(4)(A)(i)(I) of the Act; 8 C.F.R. § 214.2(p)(1)(ii)(A)(1), (4)(i)(A). We dismissed the Petitioner's appeal of that decision. The Petitioner subsequently filed a combined motion to reopen and reconsider, which we dismissed as untimely filed.[1] The matter is now before us on a second motion to reopen and reconsider in which the Petitioner contends that the lateness of its prior untimely motion may be excused because such lateness was beyond its control.

Upon review, we will reopen the matter in order to consider the merits of the previously filed motion to reopen. However, for the reasons discussed below, the combined motion currently before us will be dismissed.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1)

[1] The record reflects that we dismissed the Petitioner's appeal and mailed the decision to the Petitioner and counsel on March 11, 2021. During the coronavirus (COVID-19) pandemic, U.S. Citizenship and Immigration Services (USCIS) issued guidance that Form I-290B, Notice of Appeal or Motion, would be accepted if filed within 60 days of the unfavorable decision. Based on this extended deadline, the Petitioner's previous motion would have been deemed timely filed if received by USCIS on or before May 13, 2021, which includes the 60-day period plus three days for mailing. The record shows the Petitioner first attempted to file the previous combined motion to reopen and reconsider on April 12, 2021. On May 28, 2021, USCIS issued a notice rejecting the filing because "[t]he payment amount is incorrect or has not been provided." Thereafter, the Petitioner filed the previous motion with the proper fee on June 7, 2021, 88 days after we issued the unfavorable decision, thus causing the motion to be untimely.

state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or USCIS policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

To merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I 290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

II. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). In this case, the prior decision at issue is our dismissal of the previous combined motion, which was untimely filed.

A. Motion to Reconsider

Although the Petitioner indicates that it is filing a combined motion to reopen and reconsider, the Petitioner does not contend that the dismissal of the previous motion was incorrect based on the evidence of record at the time of the initial decision. The Petitioner concedes that the previous motion was untimely and does not claim that our dismissal decision was based on an incorrect application of law or policy. The motion to reconsider does not satisfy the regulatory requirements at 8 C.F.R. § 103.5(a)(3) and will be dismissed.

B. Motion to Reopen

The Petitioner's motion to reopen is based on a claim that the delayed filing of its previous motion may be excused at our discretion. Specifically, the regulations permit the review of an untimely filed motion to reopen where the untimeliness is shown to have been reasonable and beyond a petitioner's control. *See* 8 C.F.R. § 103.5(a). The Petitioner has established with the current motion to reopen that the late filing of its first motion to reopen was beyond its control. We will therefore reopen the matter for the purpose of reviewing the merits of the first motion to reopen.[2]

The sole issue we will discuss is whether the Petitioner submitted new facts or evidence in support of the previously filed motion to reopen demonstrating that the Beneficiary would be coming to the United States solely to participate in distinguished competitions that require an athlete with an international reputation.

1. AAO Appellate Decision

In our appellate decision, we concluded that the Petitioner did not meet its burden to establish that the Beneficiary would be coming to the United States solely to participate in distinguished competitions

[2] There is no comparable provision with respect to a motion to reconsider. 8 C.F.R. § 103.5(a). As such, we cannot excuse the untimely filing of the Petitioner's previous motion to reconsider and will not address the merits of that motion here.

that require an athlete with an international reputation. We noted that in its initial filing, the Petitioner submitted a sample boxing schedule of "hypothetical matches" that had not been set but also included a title fight actually scheduled to take place in [redacted] Texas, in September 2019. We agreed with the Director's conclusion that the Petitioner's sample schedule did not demonstrate the Beneficiary will actually participate in athletic competitions that have a distinguished reputation, as "a tentative, hypothetical schedule of future boxing matches and the concession on the schedule stating that the events are 'not real' indicates that these are not definite events but rather, represent the types of competitions in which the beneficiary intends or hopes to participate."

In addition, we determined that the record did not support the Petitioner's contention that the submitted hypothetical schedule is normal in boxing. The Petitioner argued that boxing matches are "almost never scheduled years in advance" and the provided sample schedule of hypothetical fights is normal in boxing. In support, the Petitioner submitted a letter from [redacted], a Texas boxing promoter, stating that a [redacted] cannot provide a schedule for "his next several years of boxing matches" because "[t]hese things are *not* done four or five years in advance because they *cannot* be done far in advance." (emphasis in original). [redacted] further stated that "I never have been able to reliably provide a boxer's itinerary beyond about six months into the future." We observed that although the letter from [redacted] claimed that boxing schedules cannot be set for years in advance or, in [redacted] personal experience, after six months, the Petitioner's sample schedule only included an actual boxing match set to occur weeks after the filing of the petition with the next three hypothetical matches set to occur within about six months after the time of filing. These factors indicated the Petitioner did not submit a normal sample schedule of the Beneficiary's competitions.

Further, although the record includes mention of the Beneficiary being scheduled to participate in a title fight in September 2019, it does not contain any documentation on the proposed fight or any of the other hypothetical events listed in the Beneficiary's sample boxing schedule, and the Petitioner did not explain why it was not able to provide documentation of these proposed events.

Additionally, with regard to provided statements from [redacted] representative of the World Boxing Bureau, submitted after the time of filing the petition asserting the Beneficiary would be fighting in title matches in November 2019 and April 2020, we found that while adding additional events after the time of filing may be permissible in certain situations, the Petitioner did not show that at the time of filing the Beneficiary intended to compete in events with distinguished reputations that require the participation of athletes with international reputations. We noted that a petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1), (12).

Finally, we noted that, although on appeal the Petitioner referenced a letter from [redacted] commissioner of the Oklahoma State Athletic Commission, claiming that an international boxer such as the Beneficiary would only be allowed to participate in boxing matches against "other internationally ranked boxers with similar ranking and skills," none of the hypothetical boxing matches provided in the Beneficiary's sample schedule were set to take place in Oklahoma, and the Petitioner did not provide evidence from commissioners in relevant locations indicating the hypothetical matches would only be against other internationally ranked boxers with similar ranking and skills. Based on the above, our appellate decision concluded that the Petitioner has not met its burden to show, by a preponderance of the evidence, that the proposed competitions have a

distinguished reputation and require participation of athletes who have international reputations. *See* Section 214(c)(4)(A)(ii)(I) of the Act; 8 C.F.R. § 214.2(p)(4)(i)(A), (ii)(A).

2. Previous Motion to Reopen

In its previous motion, the Petitioner reasserted that the Beneficiary "would fight similarly skilled professional boxers who are similarly ranked in BoxRec's international rankings . . . ." The Petitioner provided several additional documents, including a new boxing contract dated April 2021 for a May 2021 bout between the Beneficiary and [redacted][3] a printout from www.boxrec.com for [redacted], and an additional letter from [redacted] asserting that it is "industry practice" to "match up similarly skilled boxers."

The USCIS Policy Manual specifies:

> Relevant considerations for determining whether competitions are at an internationally recognized level of performance such that they require the participation of an internationally recognized athlete or team include, but are not limited to:
>
> - The level of viewership, attendance, revenue, and major media coverage of the events;
> - The extent of past participation by internationally recognized athletes or teams;
> - The international ranking of athletes competing; or
> - Documented merits requirements for participants.
>
> If the record shows the participation of internationally recognized caliber competitors is currently unusual or uncommon, this may indicate that the event may not currently be at an internationally recognized level of performance. In addition, while not necessarily determinative, the fact that a competition is open to competitors at all skill levels may be a relevant negative factor in analyzing whether it is at an internationally recognized level of performance. If the event includes differentiated categories of competition based on skill level, the focus should be on the reputation and level of recognition of the specific category of competition in which the athlete or team seeks to participate.

2 *USCIS Policy Manual* N.2(A)(1), https://www.uscis.gov/policy-manual/volume-2-part-n-chapter-2; *see also* USCIS Policy Alert PA-2021-04, *Additional Guidance Relating to P-1A Internationally Recognized Athletes* 1-2 (Mar. 26, 2021), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210326-Athletes.pdf.

The Petitioner's previous motion does not contain evidence sufficient to establish that the Beneficiary's intended matches qualify as events that "require an internationally recognized athlete." 8 C.F.R. § 214.2(p)(4)(i)(A). The Petitioner has not presented evidence relating to "[t]he level of

[3] We note that the new boxing contract did not state the bout would take place in Oklahoma, as the Petitioner asserted; rather the contract did not specify the fight venue. We further note that this bout already took place in July 2021 at the [redacted] Event Center in [redacted] Texas, according to the Beneficiary's competitive results on www.boxrec.com (last accessed on November 4, 2022).

viewership, attendance, revenue, and major media coverage of the [Beneficiary's intended events]"; "[t]he extent of past participation by internationally recognized athletes" in the events; "[t]he international ranking of athletes competing;" or "[d]ocumented merits requirements for participants." See 2 *USCIS Policy Manual*, *supra*, at N.2(A)(1); *see also* USCIS Policy Alert PA-2021-04, *supra*, at 1-2.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner's motion did not present new facts related the issue of whether the Beneficiary would be coming to solely to participate in distinguished competitions that require an athlete with an international reputation. However, evidentiary deficiencies in these areas significantly contributed to our dismissal of the Petitioner's appeal.

Accordingly, upon review, the Petitioner's first motion to reopen did not include new facts that adequately addressed the reasons for dismissal of the appeal and did not establish that the appeal should be reopened. For this reason, we will not disturb our decision to dismiss the appeal and the petition will remain denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.