U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35527229

Date: JAN. 02, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, an entrepreneur, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those 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 Texas Service Center denied the petition, concluding the Petitioner did not establish that he meets the initial evidence requirements for this classification, either through his receipt of a major internationally recognized award, or, in the alternative, by submitting evidence that satisfies at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3). We summarily 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). 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). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the Petitioner must either demonstrate our decision to summarily dismiss its appeal was based on an incorrect application of law or policy, or submit new facts, supported by documentary evidence, that would warrant reopening of the appeal.

In our prior decision, we observed that although the Petitioner submitted a brief in support of his appeal, the brief did not address or contest any aspect of the Director's decision and therefore did not specifically identify any erroneous conclusion of law or statement of fact on the part of the Director

as a basis for the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v). We acknowledged the Petitioner's submission of supplemental evidence on appeal but emphasized that he did not contend the previously submitted evidence was sufficient to demonstrate that he met at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), or that the Director erred in evaluating that evidence.

On motion, the Petitioner does not demonstrate that reopening or reconsideration is warranted. The Petitioner asserts that we "failed to render a de novo review of the case, which is the standard of review appropriate in the manner [sic]" and "unjustly disregarded the extensive documentation" submitted in support of the petition. While we review questions of law, policy, fact and discretion de novo on appeal, we were not required to conduct a de novo review of the record where, as here, the regulation at 8 C.F.R. § 103.3(a)(1)(v) warranted the summary dismissal of the appeal.

The Petitioner does not otherwise address our prior decision and, notably, does not contest our stated reasons for summarily dismissing his appeal. As discussed, the record reflects the Petitioner did not identify specifically any legal or factual error in the Director's decision as a basis for his appeal. The Petitioner has neither claimed nor established that our prior decision to summarily dismiss the appeal was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Rather the Petitioner's brief on motion primarily addresses the merits of the Director's decision and provides "responses to issues raised in the request for evidence and initial I-140 denial." Accordingly, the Petitioner has not provided proper cause for reconsideration of our prior decision and the motion to reconsider will be dismissed.

Further, while the motion to reopen includes new facts related to the Petitioner's claimed qualifications for the classification sought, the new evidence is unrelated to our reasons for summarily dismissing the appeal and therefore does not provide proper cause for reopening our prior decision.

As noted, the scope of a motion is limited by regulation to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). As the Petitioner has not shown proper cause for reopening or reconsideration of our prior decision to summarily dismiss his appeal, we will not address his claims, made for the first time on motion, that the Director denied the underlying petition in error. We need not conduct a de novo review or address the merits of the underlying decision absent a showing that we summarily dismissed the appeal in error. The Petitioner has not made such a showing.

For the reasons discussed, the Petitioner has not established proper cause for reopening or reconsideration. Accordingly, we will dismiss both motions.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.