U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9899447

Date: AUG. 27, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a martial artist, seeks classification as an individual of extraordinary ability. 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 Nebraska Service Center denied the petition, and we subsequently dismissed the appeal.[1] The matter is now before us on a motion to reconsider and a motion to reopen.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will deny the motions.

I. LAW

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010).

Further, a motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R.

[1] See In Re: 4899729 (Dec. 11, 2019).

§ 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

The Director denied the petition, finding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three. In dismissing his appeal, we also determined that the Petitioner did not fulfill any of the criteria.[2]

A. 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 motions do not meet the applicable requirements. See 8 C.F.R. § 103.5(a)(4).

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 proceeding at the time of the decision. 8 C.F.R. § 103.5(a)(3). On motion, the Petitioner submits a brief mirroring the same, previous arguments he made on appeal without demonstrating how we improperly adjudicated his appeal or incorrectly applied law or policy. In fact, besides the brief's introductory paragraph, the motion brief is identical to the appeal brief, without any mention or discussion of our decision dismissing the appeal. Disagreeing with our conclusions without showing that we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision. See Matter of O-S-G-, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision.)

As he did not demonstrate that we incorrectly dismissed his appeal, the Petitioner did not establish that he meets the requirements of a motion to reconsider. Therefore, we will deny his motion to reconsider.

C. Motion to Reopen

We will similarly deny the Petitioner's 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). 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. § 1003.2(c)(1) (stating that a motion

[2] Since we concluded that the Petitioner did demonstrate that he satisfied four claimed criteria, we reserved a determination on two other criteria, as he was unable to fulfill at least three. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

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 does not present new facts, supported by documentary evidence. Instead, as discussed above, the Petitioner mirrors arguments made in his previous appeal. Accordingly, we will deny his motion to reopen.

III. CONCLUSION

The Petitioner has not shown that we incorrectly dismissed his appeal based on the record before us, nor does he support the motion with new facts and evidence, establishing that he fulfilled at least three of the evidentiary criteria.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.