U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9168452

Date: DEC. 1, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a "Principal Business Consultant," 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 that the Petitioner did not provide evidence of a qualifying one-time achievement or, in the alternative, evidence that he meets at least three of the ten initial evidentiary criteria for this classification. We summarily dismissed the Petitioner's subsequent appeal because it did not include a statement in support of the appeal specifically identifying an erroneous conclusion of law or fact in the Director's decision. Although the Petitioner indicated that he would submit a brief and/or additional evidence to our office within 30 days of filing the appeal, the record did not include a supplemental brief or evidence at the time of adjudication.

The matter is now before us on a motion to reconsider. The Petitioner submits a brief and additional evidence addressing the Director's decision and the merits of his case.

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 dismiss the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reconsider must (1) 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 U.S. Citizenship and Immigration Services (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).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, 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).

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reconsider the Director's denial of the underlying immigrant petition. Instead, the filing is a motion to reconsider the most recent decision, which is our summary dismissal of the Petitioner's appeal.

II. ANALYSIS

The issue in this matter is whether the Petitioner has established that our decision to summarily dismiss his appeal was based on an incorrect application of law or USCIS policy.

The regulations provide that an officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). At the time he filed his appeal on August 31, 2018, the Petitioner did not submit a statement identifying any erroneous conclusion of law or statement of fact as a basis for the appeal, as instructed on the Form I-290B, Notice of Appeal or Motion. The Petitioner also submitted no brief or evidence with his Form I-290B but stated that he would submit those materials to our office within 30 days. When we reviewed the record of proceeding in October 2019, it did not include any supplement to the appeal. As a result, we summarily dismissed the appeal, because the appeal, as presented to us, did not identify any erroneous conclusion of law or statement of fact in the Director's denial of the petition.

In his brief on motion, the Petitioner acknowledges our summary dismissal of his appeal, but does not allege that we misapplied the law or USCIS policy in reaching that decision. Rather, his brief focuses on the Director's initial decision to deny his petition.

The Petitioner has not shown that the summary dismissal of his appeal was incorrect based on the evidence of record at the time of the initial decision. Given the record before us on appeal, the summary dismissal decision was consistent with USCIS regulations and policy.

We will not consider the newly submitted motion brief discussing the merits of the case absent evidence that we summarily dismissed the appeal in error. The Petitioner has not provided such evidence or shown proper grounds for reconsideration. Accordingly, the motion will be dismissed.

ORDER: The motion to reconsider is dismissed.