U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5301337

Date: JAN. 15, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, who asserts to be a "sponsor-investigator," 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 revoked the approval of the petition, concluding that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which require documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). We affirmed the Director's decision, and subsequently reaffirmed our findings in two motion decisions between 2013 and 2018.[1]

The matter is now before us for the third time on a combined motion to reconsider and reopen.[2]

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 combined motions to reconsider and reopen.

I. LAW

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

[1] The record reflects that the Petitioner established that he met only one criterion, scholarly articles under the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

[2] Our most recent decision in this matter is *Matter of H-X-*, ID# 1925252 (AAO Jan. 29, 2019).

II. ANALYSIS

In our most recent decision denying the Petitioner's second motion to reconsider, we found that the Petitioner did not demonstrate that we incorrectly applied pertinent law or agency policy in our previous decision, denying the Petitioner's first motion to reconsider and reopen, based on the evidence in the record at the time. Moreover, we indicated that the Petitioner cited to regulations relating to the U.S. Food and Drug Administration (FDA), which were not dispositive to the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3). Furthermore, although challenged by the Petitioner, we explained the Director's legal authority to revoke approvals of petitions.

As it relates to his most prior motion to reopen, the Petitioner presented several pages from the Standard Occupational Classification (SOC) Manual, highlighting the occupational description for medical scientists, except epidemiologists, under SOC code 19-1042, and he resubmitted other material previously evaluated and discussed in the record. We determined that the Petitioner did not explain how the information from the SOC Manual related to or established his claimed eligibility for the membership criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

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). In the current motion to reconsider, the Petitioner makes the same, previous arguments without demonstrating how we improperly adjudicated his second motion as a matter of law or policy. 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 the Petitioner did not demonstrate that we incorrectly denied his most recent motion, he 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 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."

In the current motion, the Petitioner offers previously submitted documentation. As this evidence does not qualify as "new" and we already evaluated it in earlier proceedings, we will not further consider it in this proceeding. The Petitioner did offer additional FDA regulations and a final rule from the Department of Health and Human Services relating to a responsible party for a clinical trial. However, the Petitioner did not establish that the regulations and final rule show his eligibility for any additional criteria under 8 C.F.R. § 204.5(h)(3). Accordingly, we will deny his motion to reopen.

III. CONCLUSION

The Petitioner has not shown that we incorrectly denied his most recent motions based on the record before us, nor does his new evidence on motion demonstrate that he has fulfilled at least three of the evidentiary criteria.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.