U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10802044

Date: JUL. 09, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a former professor at [redacted] College, 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 in 2012 and dismissed two subsequent motions in 2012 and 2013, respectively, concluding that the Petitioner had not satisfied the initial evidence requirements for this immigrant visa classification. In 2014, we dismissed the Petitioner's appeal of the Director's 2013 decision. We have since dismissed ten motions filed by the Petitioner between 2014 and 2019. Most recently, we dismissed a combined motion to reopen and reconsider on February 12, 2020. The matter is now before us on a motion to reconsider.

In these proceedings, the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the motion to reconsider.

I. MOTION REQUIREMENTS

A motion to reconsider must (1) state the reasons for reconsideration and 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).

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. 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 their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they 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).

III. ANALYSIS

The issue in this matter is whether the Petitioner has established that our decision to dismiss his tenth motion, a combined motion to reopen and motion to reconsider, was based on an incorrect application of law or USCIS policy.[1]

On motion, the Petitioner places particular emphasis on his receipt of an "[redacted] Award" in 2005, asserting that it should be considered evidence of a one-time achievement consistent with 8 C.F.R. § 204.5(h)(3), or evidence of a nationally or internationally recognized award consistent with 8 C.F.R. § 204.5(h)(3)(i). In our February 12, 2020 decision dismissing the Petitioner's tenth motion, we noted that we had previously explained that the record did not demonstrate that the [redacted] Award" the Petitioner received enjoyed international recognition in his field. Further, we emphasized that, in his previous motion, the Petitioner did not address our determination that even though he claimed to have received an international [redacted] Award" in 2005, the record did not demonstrate that the international edition of the award existed prior to 2010.[2]

The Petitioner asserts that our statement regarding the existence of the award prior to 2010 is "completely wrong" and that he "truly received . . [redacted] Award in the year 2005." The Petitioner has misconstrued our determination regarding this award. The record reflects his receipt of a "Prize [redacted] 2005," but we determined that the record does not contain sufficient evidence to support his claim that this prize was a nationally or internationally recognized prize or award for excellence in his

[1] Regarding motions to reopen or reconsider, 8 C.F.R. § 103.5(a)(1)(ii) states in relevant part: "The official having jurisdiction is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction." The latest decision was our February 12, 2020, decision dismissing the Petitioner's tenth motion. Therefore, a review of any claims or assertions that the Petitioner's instant motion raises is limited in scope and is restricted to that decision.

[2] The Petitioner submitted a certificate issued by Institute [redacted] in 2011, confirming his receipt of "the Prize [redacted] 2005 in the category [redacted] by practicing [redacted]." The Petitioner claimed his award was an "International [redacted] Award." The record reflects that the "International [redacted] Award" is a different award issued by the same institution and does not contain evidence of its issuance prior to 2010.

field.[3] Our determination that his 2005 [redacted] award is not the same as an "International [redacted] Award," is based on evidence in the record indicating that the international edition of the award was first presented in 2010. We never made a determination that the Petitioner did not receive an [redacted] award in 2005.

The Petitioner disagrees with our determination that there is insufficient evidence to establish that his 2005 award from the [redacted] Institute is a qualifying nationally or internationally recognized prize or award, or a qualifying one-time achievement. However, he has not established how we incorrectly applied the law or USCIS policy by reaching that determination or by dismissing his previous motion.

The Petitioner also contends that we made a "sad mistake" in our decision dated February 12, 2020, noting that we stated on page 3 that "the only appeal filed by the Petitioner was on October 7, 2013." He emphasizes that elsewhere we "said exactly the opposite," noting that our decision stated on page 2 that we had issued nine motion decisions between 2014 and 2019. Based on these statements, the Petitioner asserts that "it looks like . . . AAO ignored all the important motions between 2014 and 2019."

In his prior motion, the Petitioner argued that he had received incorrect correspondence from us informing him that we did not have a record of a pending appeal with our office. Moreover, he requested that we inform the Director that he has a pending appeal in order to maintain his pending status relating to his Form I-485, Application to Register Permanent Residence or Adjust Status. In support of his prior motion to reopen, the Petitioner submitted copies of our November 2018 correspondence and the Director's October 2018 decision dismissing his motion to reconsider the denial of his Form I-485.

In adjudicating the motion to reopen, we concluded that the Petitioner did not demonstrate how his newly submitted evidence (the November 2018 correspondence and the Director's October 2018 decision) related to our prior decision denying his ninth motion filing.[4] Moreover, the Petitioner did not show how the correspondence and the Form I-485 decision established his eligibility as an individual of extraordinary ability under section 203(b)(1)(A) of Act. Accordingly, we dismissed the motion to reopen.

With the current motion to reconsider, the Petitioner has not articulated an argument that we misapplied the law or USCIS policy by dismissing his prior motion to reopen. Moreover, the record reflects that the Petitioner has filed only one appeal of the denial of his Form I-140, and that we have adjudicated all ten of his previous motions and did not "ignore" them as claimed in the current motion. Although appeals and motions are both filed on Form I-290B, they are separate proceedings governed by separate regulations and the terms are not used interchangeably. We did not err by stating that the Petitioner has only filed one appeal.

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[3] In our decision dated February 4, 2019, we acknowledged that the Director determined in his 2012 decision that the Petitioner's [redacted] Award" qualified as a nationally recognized award. We explained why the record did not support this determination.

[4] We also observed that the record did not support the Petitioner's claim that the November 2018 correspondence from our office was incorrect. We noted that the only appeal filed by the Petitioner was the one filed on October 7, 2013, which we dismissed on July 25, 2014. In addition, we emphasized that any issues relating to his Form I-485 should be addressed in a separate proceeding to the Director, as we do not have jurisdiction over his adjustment of status application.

In the remainder of his brief on motion, the Petitioner refers to previously submitted evidence of his professional achievements and asserts that he established his eligibility for classification as an individual of extraordinary ability. He requests that we "look at the hundreds of documents, translations, letters of authorities, evidence and facts." However, he makes no additional allegations that we incorrectly applied the law or USCIS policy in our February 12, 2020 decision dismissing his tenth motion. The Petitioner's conclusory statements that he satisfies the "nationally or internationally recognized prizes or awards" criterion at 8 C.F.R. § 204.5(h)(3)(i) and is otherwise qualified for the requested classification, and his repetition of arguments he previously made in support of his appeal and prior motions, do not meet the requirements of a motion to reconsider.

Moreover, the Petitioner's request that we conduct a *de novo* review of the entire record is not properly before us on motion and is outside the scope of this proceeding, which is limited to a review of our most recent prior decision. We have previously conducted a *de novo* review of this matter, thoroughly analyzed the Petitioner's evidence, and concluded that he met only two of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), of which he must meet at least three in order to satisfy the initial evidence requirements for this classification.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not established that our prior decision, dated February 12, 2020, was based on an incorrect application of law or USCIS policy, or that it was incorrect based on the evidence in the record at the time.

ORDER: The motion to reconsider is dismissed.