U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17718554

Date: JUL. 14, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, a mechanical engineering technical specialist, 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 Nebraska Service Center denied 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 summarily dismissed the Petitioner's subsequent appeal. The Petitioner then filed a combined motion to reopen and reconsider, which we dismissed because it was filed untimely. Subsequently, the Petitioner filed a second appeal, which we rejected as improperly filed, and two subsequent combined motions to reopen and reconsider, which we also dismissed. The matter is now before us on a fourth combined motion to reopen and reconsider.

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 combined motion.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration, establish that the decision was based on an incorrect application of law or policy, and establish that the decision was incorrect based on the evidence in the record at the time of the 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 reopening or 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 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 must either establish a one-time achievement (that is, a major, internationally recognized award) or provide sufficient qualifying documentation that meets at least three of the ten criteria 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

A. Procedural History

As noted, this matter is before us on a fourth motion to reopen and reconsider. To provide context for the Petitioner's claims regarding his previous filings, we have summarized the procedural history below:

August 2018	The Director denied the Petitioner's immigrant petition, concluding that the Petitioner had not established eligibility for the classification sought.
September 2018	The Petitioner appealed the Director's decision to our office and stated that he would submit a brief and additional evidence within 30 days. The record does not show, and the Petitioner does not claim, that he submitted those materials within that period.
December 2018	We summarily dismissed the appeal, citing the regulation at 8 C.F.R. § 103.3(a)(1)(v), which requires summary dismissal of an appeal that does not identify specifically any erroneous conclusion of law or statement of fact in the decision being appealed.
January 2019	The Petitioner filed a combined motion to reopen and reconsider. On motion, the Petitioner did not contest the summary dismissal of the appeal. Rather, the Petitioner addressed the grounds for denial of the underlying petition.
June 2019	We dismissed the Petitioner's motion as untimely, because we received it after the expiration of the filing period defined at 8 C.F.R. § 103.3(a)(2)(v)(B)(*1*).
July 2019	The Petitioner appealed the denial of the motion, seeking to explain the delay in filing.

October 2019	We rejected the appeal, because the regulations make no provision for a petitioner to appeal a decision by the Administrative Appeals Office.
November 2019	The Petitioner filed a second combined motion to reopen and reconsider, seeking both to explain the untimely filing of the January 2019 motion and to submit new evidence in support of the underlying petition.
July 2020	We granted the Petitioner's motion to reopen in part and dismissed it in part, and dismissed the motion to reconsider. We excused the delay in filing the January 2019 motion, under the regulation at 8 C.F.R. § 103.5(a)(1)(i), but we also determined that the Petitioner had not overcome the summary dismissal of his September 2018 appeal.
July 2020	The Petitioner filed a third combined motion to reopen and reconsider.
February 2021	We dismissed the Petitioner's motion, concluding that he had not shown proper cause for reopening or reconsideration of our July 2020 decision.

B. Motion to Reopen

The Petitioner's current motion includes two supporting exhibits: (1) a copy of our February 2, 2021 decision dismissing his third combined motion; and (2) correspondence from the U.S. Postal Service providing proof of delivery of his first combined motion at the USCIS designated filing location on January 29, 2019, a delivery date that has never been in dispute. Neither the Petitioner's brief nor these evidentiary exhibits introduce new facts to the record that could change the outcome of our previous decision.

We will dismiss the motion to reopen, because the Petitioner has not shown proper cause for reopening the proceeding.

C. Motion to Reconsider

For the current motion to qualify as a motion to reconsider, the Petitioner must demonstrate that our immediate prior decision (issued February 2, 2021, relating to the Petitioner's third combined motion), contained errors of fact, law, or policy that affected the outcome of the decision.[1] In that decision, we made the following determinations:

- The Petitioner did not meet the requirements for a motion to reopen because he did not introduce new facts to the record or submit new evidence that could establish his eligibility for the requested benefit at the time of filing;
- The Petitioner did not establish that our July 2020 decision contained errors of fact, law, or policy. He alleged that we erred in summarily dismissing his appeal, but he did so by failing to differentiate between his September 2018 appeal filing and his January 2019 motion filing, which were separate proceedings that were dismissed by our office for different reasons; and

[1] *See* 8 C.F.R. § 103.5(a)(1)(i).

- The Petitioner did not demonstrate that we erred in summarily dismissing the original appeal and without such a showing, we need not reach his arguments that the Director erred by denying his immigrant petition.[2]

In the present motion, proper consideration is limited to these issues. In his brief, the Petitioner does not assert that we incorrectly applied the law or USCIS policy in our decision dismissing his third combined motion to reopen and reconsider. Instead, he repeatedly argues that we should have deemed his appeal of the Director's decision to be timely filed, and that we should have adjudicated the appeal on its merits, rather than dismissing it based on a procedural defect caused by the delivery courier.

Although the Petitioner cites to caselaw in support of his claim that his appeal should have been deemed timely filed, we emphasize that we did not dismiss the Petitioner's September 2018 appeal because it was untimely. The Petitioner filed a timely appeal in September 2018. However, he did not, at that time, identify any specific grounds for the appeal. Instead, he made the general statement that the denial contained unspecified errors which the Petitioner would address in a brief, to follow within 30 days. The record does not contain any timely supplemental brief from the Petitioner, and the Petitioner does not claim to have submitted one. We summarily dismissed the appeal because it did not identify an erroneous conclusion of law or statement of fact as a basis for the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v).

The Petitioner's only untimely filing was the first combined motion to reopen and reconsider filed in January 2019. We previously exercised our discretion to excuse the late filing of this motion to reopen in our decision dated July 2020. However, we determined that the January 2019 motion, when considered on its merits, did not cure the deficiencies in the Petitioner's September 2018 appeal. Specifically, the Petitioner's January 2019 motion did not include evidence that he had submitted a brief or supplemental evidence in support of his appeal or otherwise establish that our summary dismissal of the appeal was incorrect. Therefore, that motion did not provide proper cause for reopening his appeal.

The Petitioner's remaining arguments on motion relate to the merits of his immigrant petition and his belief that the Director erroneously denied that petition. As we explained in our February 2021 decision, the Petitioner's opportunity to allege specific errors in the Director's denial decision was in the appeal filed in September 2018 and the record reflects that he did avail himself of this opportunity when he filed his appeal. Absent evidence that we summarily dismissed his appeal in error, we need not reach the merits of his petition here.

IV. CONCLUSION

The current motion does not establish that our most recent decision was incorrect. Rather, the Petitioner seeks to reach back to earlier stages of the proceeding that are outside the scope of this fourth motion. The Petitioner has not overcome our determination that summary dismissal was the

[2] We nevertheless briefly addressed the Petitioner's claim that he is eligible for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act, observing that the record does not support his assertion that he enjoys the required sustained national or international acclaim and that he is among "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

proper, and required, outcome when presented with an appeal that contained no specific allegations of error in fact or law.

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.