U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13072720

Date: APR. 26, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, an attorney whose practice focuses on international law and policy, seeks classification as an alien 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 record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision. The Petitioner then filed 14 combined motions to reopen and reconsider. Some of these motions were dismissed; others were granted, in whole or in part; but each decision affirmed the core determination that the Petitioner did not establish eligibility for the benefit sought. The matter is now before us on the 15th combined motion.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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. Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)); *see also Colors of India v. Nielsen*, No. CV 18-4070-MWF (ASX), 2020 WL 3841042, at *3 (C.D. Cal. Mar. 6, 2020).

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 reopen and reconsider the denial of the petition or the dismissal of the appeal. Instead, the filing is a motion to reopen and reconsider our most recent decision.

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability who have earned sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; who seek to enter the United States to continue work in the area of extraordinary ability, and whose entry into the United States will substantially benefit prospectively the United States.

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 international 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 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) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

III. ANALYSIS

The Petitioner filed his 14th motion in November 2019; we dismissed that motion in June 2020. By regulation, the scope of the Petitioner's 15th and latest motion to reconsider is limited to errors of fact, law, or policy in our June 2020 decision.

One of the regulatory eligibility criteria concerns performance in a leading or critical role for organizations or establishments with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). In our June 2020 decision, we affirmed a prior finding that the Petitioner's vice chairmanship of a committee of the American Bar Association (ABA) occurred after the petition's filing date, and therefore could not establish eligibility at the time of filing. On motion, the Petitioner states that this finding "was incomplete," because he had previously served in leading or critical roles for other organizations, particularly what he calls "United Nations-centric" roles with the [redacted] Bar Association and the United Nations Secretariat.

We have already addressed the Petitioner's core claims about his work with these organizations in prior decisions. Our initial appellate decision addressed the issue extensively, as did the first motion decision. Those decisions are no longer before us. The Petitioner has established no error in our June 2020 decision that would compel us to revisit the issue yet again.

Significantly, in his November 2019 motion, the Petitioner did not mention the United Nations Secretariat or the [redacted] Bar Association. Because the November 2019 motion was the only matter before us in June 2020, we did not err by failing to reach back further into the record and readjudicate claims that we had already addressed in prior motions years before (nor are they ripe for review in any future motions).

Furthermore, the Petitioner's submission of evidence that he could have submitted years ago does not establish cause for reopening the proceeding. This, too, was explained in multiple prior decisions. Some of this evidence concerns a short-term, unpaid student internship at the United Nations Secretariat, which the Petitioner undertook in 2006-07. We already concluded in prior decisions that this internship was neither leading nor critical with respect to the United Nations. The submission of additional documentation from that internship does not alter this conclusion.

Other evidence concerns the Petitioner's ongoing activities with bar associations at various levels. As explained previously, we need not consider the Petitioner's current activities unless the Petitioner has first established eligibility at the time he filed the petition in May 2010.

In his 13th motion, the Petitioner claimed that exemption from ABA reimbursement limits satisfies the regulatory requirement at 8 C.F.R. § 204.5(h)(3)(ix), relating to "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." As we first observed in our October 2019 decision dismissing the Petitioner's 13th motion, and again in our June 2020 decision, the evidence concerns reimbursements that the Petitioner received after the filing date, which cannot establish that the Petitioner was eligible at the time of filing as required by 8 C.F.R. § 103.2(b)(1). The Petitioner did not overcome this determination in his 14th motion, and it is no longer ripe for review on the 15th motion or in any hypothetical future motion. In his latest motion, the Petitioner takes issue with a footnote in our decision concerning taxation of reimbursements. This question was not central to the outcome of our decision. Further discussion of this side issue will not change the fundamental issue that the Petitioner received these reimbursements after the filing date.

The Petitioner contends that we have discretionary authority to waive the application of the regulations at 8 C.F.R. § 103.2(b)(1) and (12), which we have "continuously declin[ed] to exercise." The Petitioner has made this claim before, and we rebutted it in our eighth and ninth motion decisions. In raising it yet again, the Petitioner cites no statute, regulation, or policy to show that we have that authority. The bare assertion that we have such authority does not satisfy the regulation at 8 C.F.R. § 103.5(a)(3), which requires the Petitioner to support its legal arguments. The Petitioner maintains that "the unique circumstances of this case" warrants such a discretionary waiver, but the Petitioner does not explain what those "unique circumstances" are. Therefore, we will not review the entire record in the aggregate, as the Petitioner requests, nor will we revisit issues already decided in the appellate decision or earlier decisions on motion.

Having contended that we should waive the requirement that the Petitioner establish eligibility at the time of filing, the Petitioner offers new assertions that he was, in fact, eligible at the time of filing. The Petitioner establishes that he qualified for immigration benefits in [redacted] (in 2006) and [redacted] (in 2008) that, he claims, are functionally equivalent to the immigrant classification he seeks in this proceeding. The Petitioner does not explain why he waited until his 15th motion to bring this information forward, nor does the newly submitted evidence support his claims that the immigration benefits in question are comparable to classification as an alien of extraordinary ability under U.S. law. [redacted] "Quality Migrant Admission Scheme" refers to "highly skilled or talented persons." The Petitioner submits no information regarding the requirements of [redacted] "Landed Permanent Residence Scheme." The Petitioner has not established the relevance of this newly submitted evidence, regarding facts that the Petitioner did not claim in his initial filing or in any subsequent motion over the last ten years.

In his 14th motion, the Petitioner claimed to have suffered violations of his Constitutional right to due process. In our June 2020 decision, we explained that we have "no jurisdiction to consider Constitutional claims," and that "the Petitioner has not established that any violation of the regulations resulted in prejudice." The Petitioner contends that "constitutionality review is not what the Petitioner asserted in the prior motion," but that is exactly what his due process claim entailed, and in the present motion he refers to "constitutional transgressions" and "constitutional Fifth Amendment substantive due process." The Petitioner asserts that our "conduct appeared to be egregious and outrageous and shock the contemporary conscience," but rather than explain further, the Petitioner cites a number of court cases that did not concern immigration appeals. The Petitioner does not explain how the cited cases relate to this proceeding, or how the dismissal of an appeal and subsequent motions is comparable to the "conscience-shocking" behavior described in those court cases. As we previously observed, "the Supreme Court has 'recognize[d] that a benefit is not a protected entitlement if government officials may grant or deny it in their discretion.'" *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005).

Quoting from various cited cases, the Petitioner uses words such as "brutal," "offensive," and "malicious," without explaining how any of those adjectives applies to the denial of an immigration benefit.

For the above reasons, we find that the Petitioner has not established that our prior decision was incorrect at the time of that decision. As such, the motion does not meet all the requirements of a motion to reconsider, and therefore we will dismiss that motion. Furthermore, the newly submitted evidence does

not establish cause for reopening the proceeding, as it does not demonstrate the Petitioner's eligibility at the time he filed the petition. Therefore, we will dismiss the motion to reopen.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the prior motion. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.