U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17933004

Date: FEB. 9. 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a plant pathology researcher, seeks classification as an individual of extraordinary ability. 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. We then dismissed the appeal and two subsequent motions. The matter is now before us on a third motion filing.

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 motions.

I. LAW

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 sustained acclaim and the 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 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).

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. Additionally, a review of any motion is limited to the bases

supporting the prior adverse decision. 8 C.F.R. § 103.5(a)(1)(i). Thus, we examine any new arguments and facts to the extent that they pertain to our dismissal of the Applicant's second motion filing.

II. ANALYSIS

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner satisfied four of the initial evidentiary criteria: judging at 8 C.F.R. § 204.5(h)(3)(iv), original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). Because he met the minimum of at least three criteria, the Director made a final merits determination and found that the Petitioner did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. On appeal, we conducted a *de novo* review of the proceeding and determined that the Petitioner fulfilled only two criteria, judging and scholarly articles, and we withdrew the Director's findings for the original contributions of major significance and leading or critical role criteria. As the record did not establish that the Petitioner complied with at least three criteria, we deemed it unnecessary to provide a final merits determination.

In his first motion filing, the Petitioner indicated in part 2 on Notice of Appeal or Motion (Form I-290B), that he was filing a motion to reopen and a motion to reconsider of the Director's decision. Specifically, he indicated: "Form I-140" (item 2, USCIS Form for the Application or Petition That is the Subject of This Appeal or Motion), '[redacted]' (item 3, Receipt Number for the Application or Petition), "EB-1" (item 4, Requested Nonimmigrant or Immigrant Classification), "02/15/2019" (item 5, Date of Adverse Decision), and "Nebraska Service Center" (item 6, Office That Issued the Adverse Decision). The Petitioner's responses to the questions in part 2 on Form I-290B reflected his filing of combined motions on the Director's decision rather than on our appellate decision. In his second motion, which was filed seven days after his first motion filing, the Petitioner stated that "[t]oday we discovered that we had used a Form I-290B that had an expiration date of 02/04/2020" and submitted a more current edition of Form I-290B with the same responses as the prior Form I-290B. Again, the included USCIS form, petition receipt number, decision date, and office reflected the Petitioner's filing of combined motions on the Director's decision rather than on our appellate decision.

We dismissed both motions as untimely filed because the motions were submitted 357 and 364 days, respectively, after the issuance of the Director's decision.[1] In the current motion, the Petitioner asserts that "it is an immense and obvious Service error was that USCIS assumed that the motion which was the subject of this Dismissal Order referred to reviewing the I-140 decision to deny, rather than the appellate decision to deny the appeal."[2] However, we did not assume that the motion filings were based on the Director's decision denying the petition. Rather, we adjudicated the Petitioner's motions based on his responses to the items in part 2 of Form I-290B, which indicated motion filings on the

[1] The Petitioner submits two copies of the same decision claiming that "[t]he Notice of Dismissal in Appendix A apparently refers to both filings." However, the record reflects that we issued two separate decisions on the same day for each motion filing [redacted] and [redacted].

[2] The Petitioner also claims that "[v]ery clearly the I-140 form was what was being denied on 01/16/2020." On the contrary, the Director denied Form I-140 on February 15, 2019, and we dismissed the appeal (Form I-290B) on January 16, 2020.

Director's decision denying the underlying petition.[3] Specifically, as indicated above, the Petitioner responded on his Form I-290B that he was filing a motion on his "Form I-140" rather than on his Form I-290 (appeal), that the receipt number was "[redacted] (Form I-140) rather than [redacted] (Form I-290B), that the adverse decision was "02/15/2019" rather than 01/16/2020 (the date of our decision dismissing the appeal), and that office that issued the adverse decision was the "Nebraska Service Center" rather than the AAO. Accordingly, we adjudicated his motion filings based on his responses that corresponded to the Director's decision.

Moreover, the Petitioner claims that Form I-290B was "only designed to appeal a denied PETITION OR APPLICATION" (emphasis in original), and the form makes it "impossible" to file a motion on an appellate decision. The Petitioner, however, did not corroborate his assertions with independent, objective evidence. Furthermore, the regulations and filing instructions do not support his claims. Every form, benefit request, or other document must be submitted and executed in accordance with the form instructions. 8 C.F.R. § 103.2(a)(1). The instructions for Form I-290B states that the primary purpose is to file "[a]n appeal with the Administrative Appeals Office (AAO)" or "[a] motion with the [USCIS] office that issued the latest decision in your case (including a field office, service center, or the **AAO**)" (emphasis added).[4] Furthermore, the instructions for part 2 indicate to "[p]rovide the name of the office that issued the decision that is the subject of your appeal or motion. **If you are filing a motion on an AAO decision, the correct office is 'Administrative Appeals Office (AAO)'**" (emphasis added). As demonstrated, the purpose of Form I-290B is not only to appeal denied petitions or applications but also to file motions on field office, service center, and AAO decisions. In addition, the instructions for part 2 of Form I-290B specifically address the filing of motions with the AAO.

For the reasons discussed above, we correctly adjudicated the Petitioner's combined motion filing based on the information provided by him. Moreover, the Petitioner did not show that we erred in dismissing his combined motions as untimely filed as a matter of law or policy under 8 C.F.R. § 103.5(a)(3). Furthermore, the Petitioner did not present new facts or establish how his inability to follow form instructions and properly complete form items would warrant reopening the proceeding under 8 C.F.R. § 103.5(a)(2).

III. CONCLUSION

The Petitioner did not establish that we incorrectly applied law or policy. In addition, the Petitioner did not demonstrate new facts in order to reopen the proceeding.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

[3] We retained jurisdiction over the combined motion filings of the Director's decision because we made the latest decision dismissing the Petitioner's appeal. *See* 8 C.F.R. § 103.5(a)(1)(ii).

[4] We note that uscis.gov repeats to use Form I-290B to file "[a]n appeal with the Administrative Appeals Office (AAO) or "[a] motion with the USCIS office that issued the latest decision in your case (including a field office, service center, or the AAO)."