U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20598025

Date: MAY 26, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, an administrative services manager, 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 in November 2018, concluding that the record did not establish that the Petitioner had either demonstrated a one-time achievement, that is, a major, internationally recognized prize or award, or satisfied at least three of ten initial evidentiary criteria, as required. The Applicant filed a combined motion to reopen and reconsider the decision. The Director dismissed the combined motion in May 2019.

The Petitioner subsequently filed an appeal, and then two combined motions, with us. We dismissed the appeal in July 2020, and the motions in April 2021 and August 2021. The matter is now before us on a third combined motion.[1]

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 latest combined motion.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics 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 can demonstrate international recognition of his or her achievements in the field through a one-time

[1] 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. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)).

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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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).

II. 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. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i).

III. ANALYSIS

In August 2021, we dismissed the Petitioner's second motion to reconsider with a six-page decision in which we discussed the Petitioner's arguments and explained why they did not overcome the basis of the appeal's denial and were deficient. The Petitioner's latest motion does not address or rebut the conclusions in our August 2021 decision. Instead, apart from a few introductory paragraphs, the brief for the Petitioner's latest (third) motion is almost identical to the brief submitted with her second motion. The Petitioner does not cite any statute, regulation, case law, or other sources to establish that our prior conclusions regarding these arguments were incorrect.

As noted above, 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 to reconsider is not a process to seek reconsideration by generally alleging error in the prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). The Petitioner's resubmission of largely the same brief does not show proper cause for reconsideration.

In her second motion, the Petitioner asserted that she had previously submitted relevant new evidence that we have not yet duly considered. When we dismissed that second motion in August 2021, we discussed the evidence and explained why it did not satisfy regulatory criteria at 8 C.F.R. § 204.5(h)(3) relating to awards, memberships, and salary. The Petitioner's latest motion includes a copy of our August 2021 decision. Nevertheless, rather than answer or contest any of our discussion of the evidence in question, the Petitioner repeats the claim that we have not addressed the evidence at all, and therefore "reopening of this case and reconsideration of this evidence . . . is required."

For the reasons explained above, the Petitioner's latest filing does not meet the requirements of a motion to reconsider. We will therefore dismiss the motion.

Because the motion brief is mostly identical to the brief submitted with her prior motion, the latest motion includes no new facts. The Petitioner's latest motion also includes no new evidence. As a result, the motion does not meet the requirements of a motion to reopen, and must be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.