U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23414566

Date: OCT. 19, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a martial artist, 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 November 2018, 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 and four subsequent motions. The matter is again before us on a combined motion to reopen and reconsider.

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.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence.[1] 8 C.F.R. § 103.5(a)(2). A motion to reconsider is based on an incorrect application of law or policy.[2] 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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. Instead, it is a motion to reopen and reconsider our most recent decision, the May 16, 2022, dismissal of the Petitioner's fourth motion. Therefore, we cannot consider new objections to the earlier denial,

[1] Motions for the reopening of immigration proceedings are disfavored for the same reasons as are 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, 108 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *Id.* at 110.

[2] The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The very nature of a motion to reconsider is that the original decision was defective in some regard. *See Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991).

and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

As we explained in our prior decision, the Petitioner did not 1) submit new evidence or state new facts or 2) identify any specific errors in our dismissal of his fourth appeal. [3] Instead, he repeated previous assertions from prior submissions which did not overcome our earlier conclusions.

Rather than address our most recent dismissal, the Petitioner again asserts that he is eligible for the requested classification.

Therefore, we will dismiss the Petitioner's motion to reconsider because he does not establish that we erred in our May 2022 motion decision. *See* 8 C.F.R. § 103.5(a)(3). In addition, we will dismiss his motion to reopen because he has not provided documentary evidence of new facts related to that decision. *See* 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[3] As we explained, "a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior appellate decision. The moving party must specify the factual and legal issues that were previously decided in error or overlooked in our prior decision or must show how a change in law materially affects our prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006)."