U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23378972

Date: OCT. 31, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a martial arts instructor, 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, concluding that the Petitioner had not: (1) satisfied the initial evidentiary criteria set forth in 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that the Petitioner meets at least three of the ten regulatory criteria; or (2) established that he would work in his area of expertise. We determined that the Director was correct overall in concluding that the petition did not warrant approval, andwe therefore dismissed the Petitioner's appeal and four subsequent motions. The matter is now before us on a fifth motion, this time a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).[1] Upon review, we will dismiss the motion.

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 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).

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

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).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits U.S. Citizenship and Immigration Services' authority to reconsider to instances where an applicant has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements at 8 C.F.R. § 103.5(a)(1)(iii) (such as submission of a properly completed and signed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. Specifically, a motion to reopen is based on factual grounds and must: (1) state the new facts to be provided in the reopened proceeding; and (2) be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). In these proceedings, it is the petitioner's burden to establish by a preponderance of the evidence eligibility for the requested benefit. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

In our most recent decision, the dismissal of the Petitioner's fourth motion, we determined that the Petitioner made the same assertions and submitted a brief whose content was nearly identical to the one provided in support of the prior third motion. As such, we concluded that the Petitioner offered no cogent argument to demonstrate that we incorrectly applied the law or USCIS policy in our prior decision where we dismissed the Petitioner's third motion because he did not meet the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). Therefore, a final merits determination was not necessary since the Petitioner did not meet three of the initial ten required criteria. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision). We also determined that the Petitioner did not establish that we erred in reserving a determination on his intent to continue to work in his area of expertise under section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. § 204.5(h)(5).

As noted in our prior decision, the review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we will examine only new facts or arguments that pertain to our dismissal of the Petitioner's fourth motion, which was a motion to reconsider. Thus, the issue before us is whether the Petitioner can establish that we incorrectly applied law or policy in dismissing the prior motion to reconsider.

In support of the current motion, the Petitioner submits a brief addressing the merits of his claimed eligibility for the extraordinary ability visa classification, thereby seeking adjudication of the original claims and evidence. However, the purpose of a motion is to address new facts or evidence in the case

of a motion to reopen and/or to address error in how the law or USCIS policy was applied in the decision that immediately preceded the motion in a motion to reconsider. In this instance, our prior decision addressed the merits of a motion to reconsider the Petitioner's third motion. We concluded that the Petitioner did not establish that we incorrectly applied the law or USCIS policy in our prior decision dismissing his third motion. Merely disagreeing with our conclusions without showing how we erred as a matter of law or pointing to policy that contradicts our analysis of the evidence is not a ground to reconsider our decision.[2]

Here, in the decision that immediately preceded this motion, we declined to re-adjudicate the merits of the Petitioner's eligibility claims, explaining that those claims, and evidence submitted in support thereof, had been previously addressed in a comprehensive appeal decision that thoroughly analyzed and explained why the indicated evidence and claimed arguments did not meet the regulatory requirements. Although the Petitioner disagrees with our prior determination regarding the merits of his eligibility, he offers no new facts nor establishes that our prior decision dismissing the motion to reconsider was incorrect as a matter of law or policy. Accordingly, the Petitioner did not demonstrate that his current motion meets the requirements for a motion to reopen under 8 C.F.R. § 103.5(a)(2) or the requirements of a motion to reconsider under 8 C.F.R. § 103.5(a)(3). Therefore, we will dismiss the motion to reopen and reconsider.

ORDER: The motion to reopen and reconsider is dismissed.

[2] "Motions for reopening 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 (1988)).