U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26505739

Date: APR. 03, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a vocational agricultural teacher, seeks classification as an individual of extraordinary ability in the sciences. 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, concluding the record did not establish the Petitioner satisfied at least three of the ten initial evidentiary criteria. We dismissed the subsequent appeal, explaining that the Petitioner's evidence did not establish his eligibility for the requested classification. The matter is now 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 to reopen and reconsider.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the applicant has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, an applicant 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).

II. ANALYSIS

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts to warrant reopening or has established that our decision to dismiss the prior appeal was based on an incorrect application of law or USCIS policy. We therefore incorporate our prior decision by reference and will repeat only certain facts and evidence as necessary to address the Petitioner's claims on motion.

A. Motion to Reconsider

As the Petitioner does not claim on motion that our prior decision contained an error of law or policy, it cannot meet the fundamental requirements of a motion to reconsider, and it must be dismissed. On motion, the Petitioner provides a table listing the evidence and arguments he asserts establish his eligibility under various criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The table contains additional bulleted information for consideration under the criterion at 8 C.F.R. § 204.5(h)(3)(ix), relating to a high salary or other significantly high remuneration for services, in relation to others in the field. In his prior appeal, he provided a nearly identical table and as such, these bulleted items appear to be the only difference between the table on motion and the table submitted on appeal. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. 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). Here, the Petitioner does not identify any specific error of law or policy in our prior decision. Rather, he requests a general reconsideration of his eligibility, which is insufficient to meet the requirements of a motion per 8 C.F.R. § 103.5(a)(3).

The Petitioner adds bulleted information about his role as a "Scientist III" at [redacted] University and states that his "salary is in the upper 90% of the salary offered for a Soil and Plant Scientist in the [redacted] area as per the Bureau of Labor Statistics [(BLS)]." To evidence his salary, the Petitioner relies upon an offer letter dated December 2022; however, this cannot serve as evidence that would establish eligibility at the time he filed his initial petition in June 2021. 8 C.F.R. § 103.5(a)(3). USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. See Matter of Michelin Tire Corp., 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

Even if we considered the [redacted] University job offer as evidence that could establish eligibility at the time of filing, the Petitioner's statement that his "salary is in the upper 90% . . . for a Soil and Plant Scientist . . ." would not establish eligibility under the salary criterion. The Petitioner has not offered sufficient evidence to establish that his job as either a "vocational agricultural teacher" or a "Scientist III" is the same as a soil and plant scientist. Even if this were established, it would not be sufficient, as the Petitioner merely asserts this statistic without offering corroborating evidence of it for our review. Finally, even if we found that he works as a soil and plant scientist and his salary is in the upper 90%, this would still be insufficient to establish eligibility under this criterion. The Petitioner

has not explained how a salary in the "upper 90%" for the [redacted] area" is high in relation to others in the field overall.[1]

For the foregoing reasons, the Petitioner has not shown that our prior decision contained errors of law or policy, or that the decision was incorrect based on the record at the time of that decision. Therefore, the motion does not meet the requirements of a motion to reconsider, and it must be dismissed.

B. Motion to Reopen

The Petitioner presents no new or additional evidence on motion. Therefore, the Petitioner has not shown proper cause for reopening the proceedings.

III. CONCLUSION

For the reasons discussed, the evidence provided in support of the motion to reopen does not overcome the grounds underlying our prior decision, and the Petitioner's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or USCIS policy. Therefore, the combined motion to reopen and reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.

[1] In addition, a salary in the upper 90% would not necessarily support a finding that he is one of the small percentage who has risen to the very top of the field of endeavor.