U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25951460

Date: APR. 10, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a makeup artist styled as a "micropigmentation specialist," seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality 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, concluding that the record did not establish that the Petitioner either received a major, internationally recognized prize or award, or satisfied at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3). The Petitioner then submitted an appeal; however, we summarily dismissed the appeal because it was not supported by a statement that specifically identifies an erroneous conclusion of law or statement of fact in the decision being appealed. The matter is now before us on combined motion to reopen and motion to reconsider. 8 C.F.R. § 103.5.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the combined motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

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). We do not consider new facts or evidence in a motion to reconsider.

Specifically, our review of this motion to reopen is limited to the issue of whether a new fact, supported by documentary evidence, establishes that we erred by summarily dismissing the appeal. 8 C.F.R. § 103.5(a)(2). In turn, our review of this motion to reconsider is limited to the issue of whether we incorrectly applied a law or policy based on the record of proceedings at the time we summarily dismissed the appeal of the Form I-140. 8 C.F.R. § 103.5(a)(3).

On motion, the Petitioner submits an undated, two-page brief that indicates it is "in support of [the Petitioner's] Appeal to the Administrative Appeals Office." However, the brief references our summary dismissal decision dated September 29, 2022, which the Petitioner acknowledges "specifically states that the appeal was being dismissed because Petition [sic] did not submit a brief specifying the reasons the Service made an incorrect decision on Form I-140." Therefore, the brief appears to be in support of the Petitioner's combined motion to reopen and motion to reconsider, not in support of her appeal. The motion brief summarizes the preponderance of evidence standard and states, in relevant part, the following:

> In this case, petitioner has presented sufficient evidence, when reviewed in its entirety, to establish by the preponderance of the evidence, that petitioner meets at least three out of ten criterions set forth by regulations. We are not submitting a brief to refute the law since the only concern we present is the fact that the Service did not review our record in its entirety and we kindly request the AAO to review the evidence to remand the case to the Service for approval [sic].

The Petitioner does not state new facts on motion to reopen that may establish that, contrary to our summary dismissal, the Petitioner supported the appeal with a statement that specifically identified an erroneous conclusion of law or statement of fact in the decision being appealed. Therefore, the submission does not satisfy the requirements of a motion to reopen. *See* 8 C.F.R. § 103.5(a)(2). In turn, the Petitioner does not identify a law or policy we may have incorrectly applied in our summary dismissal. Therefore, the submission does not satisfy the requirements of a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3).

In summation, the Petitioner has not submitted a new fact, supported by documentary evidence, sufficient to establish that we erred in concluding that the appeal was not supported by a statement that specifically identified an erroneous conclusion of law or statement of fact. *See* 8 C.F.R. § 103.5(a)(2); 8 C.F.R. § 103.3(a)(1)(v). In addition, the Petitioner has not established that our previous decision to summarily dismiss the appeal was based on an incorrect application of law or policy and that it was incorrect based on the evidence then before us. *See* 8 C.F.R. § 103.5(a)(3); 8 C.F.R. § 103.3(a)(1)(v). The appeal remains dismissed and the petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.