U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 27886143

Date: AUG. 09. 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a mechanical engineering technical specialist, 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, concluding that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which require documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). We summarily dismissed the Petitioner's subsequent appeal. The Petitioner then filed a combined motion to reopen and reconsider, which we dismissed because it was filed untimely. Subsequently, the Petitioner filed a second appeal, which we rejected as improperly filed, and five subsequent combined motions to reopen and reconsider, which we also dismissed. The matter is now before us on combined motions to reopen and reconsider.

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 motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

A motion to reconsider must establish that our prior 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

As noted, this matter is before us on a seventh motion to reopen and reconsider. The Petitioner's current motion includes a brief that largely reiterates his prior arguments that we erred in our previous decisions and that the Director abused the discretion of USCIS by denying his petition. The Petitioner's brief conflates some of those decisions and the filing history. For clarity and to provide context for the Petitioner's claims regarding his previous filings, we summarize the procedural history below.

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| July 2017 | The Petitioner filed the petition for consideration under the EB-1 classification. |
| August 2018 | The Director denied the Petitioner's immigrant petition, concluding that the Petitioner had not established eligibility for the classification sought. |
| September 2018 | The Petitioner appealed the Director's decision to our office and stated that he would submit a brief and/or additional evidence within 30 days. The record did not show that he submitted those materials within that period. |
| December 2018 | We summarily dismissed the appeal, citing the regulation at 8 C.F.R. § 103.3(a)(1)(v), which requires summary dismissal of an appeal that does not identify specifically any erroneous conclusion of law or statement of fact in the decision being appealed. |
| January 2019 | The Petitioner filed a combined motion to reopen and reconsider. On motion, the Petitioner did not contest the summary dismissal of the appeal; the record did not show, and the Petitioner did not claim, that he submitted supporting evidence within the required 30-day period. Rather, the Petitioner addressed the grounds for denial of the underlying petition. |
| June 2019 | We dismissed the Petitioner's motion as untimely because we received it after the expiration of the filing period defined at 8 C.F.R. § 103.5(a)(1)(i). |
| July 2019 | The Petitioner appealed the denial of the motion, seeking to explain the delay in filing. |
| October 2019 | We rejected the appeal because the regulations provide no provision for a petitioner to appeal a decision by the Administrative Appeals Office. |
| November 2019 | The Petitioner filed a second combined motion to reopen and reconsider in which he sought both to explain the untimely filing of the January 2019 motion and to submit new evidence in support of the underlying petition. |
| July 2020 | We dismissed the motion to reconsider. However, we granted the Petitioner's motion to reopen in part and dismissed it in part. We excused the delay in filing the January 2019 motion under the regulation at 8 C.F.R. § 103.5(a)(1)(i), but we also determined that the Petitioner had not submitted new facts on motion to overcome our summary dismissal of his September 2018 appeal. |

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| July 2020 | The Petitioner filed a third combined motion to reopen and motion to reconsider. |
| February 2021 | We dismissed the Petitioner's motions, concluding that he had not shown proper cause for the reopening or reconsideration of our July 2020 decision. In our decision, we also briefly addressed some of the evidence the Petitioner submitted in support of his claim that he is eligible for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. We explained why this evidence did not satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3). |
| March 2021 | The Petitioner filed a fourth combined motion to reopen and motion to reconsider. |
| July 2021 | We dismissed the Petitioner's motions, concluding that he had not shown proper cause for the reopening or reconsideration of our February 2021 decision. |
| September 2021 | The Petitioner filed a fifth combined motion to reopen and motion to reconsider. He presented a new claim that he had, in fact, filed timely supporting evidence for his initial appeal of the Director's decision. |
| May 2022 | We dismissed the Petitioner's motions, concluding, in part, that while the Petitioner claimed that he had filed timely supporting evidence, he did not include documentation, such as proof of mailing or a copy of a brief, to demonstrate his claim. We concluded that the Petitioner he had not shown proper cause for the reopening or reconsideration of our July 2021 decision. |
| July 2022 | The Petitioner filed a sixth combined motion to reopen and motion to reconsider. |
| January 2023 | We dismissed the Petitioner's motions, concluding that he had not shown proper cause for the reopening or reconsideration of our May 2022 decision. |

As to the present combined motions, the issues are whether the Petitioner: (1) has submitted new facts, supported by documentary evidence, to warrant reopening, and (2) has established that we incorrectly applied the law or USCIS policy in dismissing his sixth combined motion to reopen and reconsider. The matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision, which is the decision to dismiss the Petitioner's sixth motion. General support that a motion must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.5(a)(1)-(3), which discusses requirements for reopening and reconsideration that include the underlying or latest decision, the time limits in which one may file a motion after the most recent decision, as well as jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing.

As discussed in our previous decisions, which we incorporate here by reference, the Petitioner has repeatedly requested that we reopen his appeal and address the merits of his claim that he meets the eligibility requirements for classification as an individual of extraordinary ability at section 203(b)(1)(A) of the Act. In September 2018, the Petitioner filed an appeal that was not accompanied

by a statement or other evidence identifying the basis for the appeal. Although he indicated on the Form I-290B that he would provide a brief and/or additional evidence to our office within 30 days in order to meet this requirement, the record reflects that he did not do so. We summarily dismissed the appeal, citing the regulation at 8 C.F.R. § 103.3(a)(1)(v), which requires summary dismissal of an appeal that does not identify specifically any erroneous conclusion of law or statement of fact in the decision being appealed. As we explained in our prior decisions on motions that subsequently followed the appeal dismissal, the only way the Petitioner may succeed on a motion and have his appeal reopened is to cure the deficiencies that led to the summary dismissal of his appeal. Absent evidence that he submitted a brief or other evidence identifying the basis for his appeal of the Director's decision within 30 days of filing his appeal in September 2018, the Petitioner cannot establish proper cause to reopen that appeal.

The Petitioner has previously emphasized and currently reiterates that, in our decision summarily dismissing the appeal, we advised him that he could file a motion to reopen and/or reconsider. As reflected in the procedural history summarized above, he initially filed an untimely motion in response to the summary dismissal of his appeal. Although we initially dismissed the motion as untimely, we later reviewed the motion to reopen on its merits after exercising our discretion to excuse the late filing. *See* 8 C.F.R. § 103.5(a)(1)(i). However, as discussed in our July 2020 decision, the motion to reopen did not include evidence showing proper cause to reopen the appeal because it did not include new facts or evidence to overcome the dismissal of the appeal; the Petitioner did not demonstrate that he had filed a brief or other statement in support of the appeal or otherwise show that the summary dismissal of the appeal was not warranted. The Petitioner was informed that the purpose of a motion following the dismissal of an appeal is to address issues raised in the appellate decision, not to revisit the Director's initial adverse decision.

The Petitioner has filed several motions alleging errors in the Director's decision, and these motions were dismissed with the explanation that the Petitioner must first address the contents of the most recent decision—in these instances, his successive combined motion dismissals. Our last dismissal, issued in January 2023, informed the Petitioner that multiple motion filings serve to thwart the strong public interest in bringing issues to a close, particularly in immigration proceedings where every delay works to the filing party's advantage who wishes to remain in the United States. *Cf. Hernandez-Ortiz v. Garland*, 32 F.4th 794, 800–01 (9th Cir. 2022) (citing *INS v. Doherty*, 502 U.S. 314, 323 (1992) and *INS v. Abudu*, 485 U.S. 94, 107–08 (1988)). The dismissal explained that USCIS has the latitude and discretion to be restrictive in granting motions, as granting them too freely can create endless delays to a final resolution, not to mention needlessly wasting government resources attending to repeated requests. *Cf. Abudu*, 485 U.S. at 108. This demonstrates why a filing party bears a "heavy burden" when they seek a motion, and that burden incrementally increases with each subsequent motion filing. *Id.*

The present combined motions reiterate the Petitioner's arguments from previous motions that the dismissed appeal should be reopened and that the denial of his petition was in error. As previously explained, the Petitioner's opportunity to allege specific errors in the Director's denial decision was in the appeal filed in September 2018, and the record reflects that the Petitioner did not avail himself of this opportunity by submitting evidence of his arguments within 30 days of filing the appeal. The filing of the appeal did not create or preserve any right for the Petitioner to dispute the Director's

denial in subsequent motions. The combined motions do not include new evidence or describe any error involved in the most recent decision from January 2023.

For these reasons, we determine the Petitioner has not overcome our reasoning within his sixth motion dismissal through new evidence in this motion to reopen, nor has he established that the decision was based on an incorrect application of law or USCIS policy necessary to meet the requirements for filing a motion to reconsider. Although the Petitioner generally asserts that USCIS failed to consider his documentary evidence, he does not address what material this office failed to consider in our January 2023 dismissal. The current motion does not establish that our most recent decision was incorrect. Rather, the Petitioner seeks to reach back to earlier stages of the proceeding that are outside the scope of this sixth motion. The Petitioner has not submitted new facts or evidence sufficient to overcome our determination that summary dismissal was the proper and required outcome when presented with an appeal that contained no specific allegations of error in fact or law. The Petitioner has not shown proper cause for reopening or reconsideration.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision. We will not re-adjudicate the petition anew based on the present motion to reopen and, therefore, the underlying petition remains denied.

The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). The Petitioner's contentions in the current motion merely reargue facts and issues we have already considered in our previous decisions. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("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 Board decision"). We will not re-adjudicate the petition anew based on the present motion to reconsider and, therefore, the underlying petition remains denied.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.