U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28284448

Date: AUG. 28, 2023

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (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 that the Petitioner did not establish that he met the initial evidence requirements for this classification based on his receipt of a major, internationally recognized award or, in the alternative, by meeting at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3).[1] We dismissed the Petitioner's subsequent appeal on the same grounds, and then dismissed the Petitioner's previous combined motions to reopen and reconsider. 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 motions.

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 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

[1] 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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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).

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).

In support of the motion to reopen, the Petitioner submits additional documentation related to the criterion at 8 C.F.R. § 204.5(h)(3)(ix). This criterion requires evidence that a petitioner has commanded a high salary, or other significantly high remuneration for services, in relation to others in his field. The new evidence provided with the motion consists of a U.S. Citizenship and Immigration Services (USCIS) approval notice indicating that the Petitioner is the beneficiary of an H-1B nonimmigrant petition authorizing his employment with a private U.S. university from February 2023 through February 2026, along with copies of his pay statements from the university indicating that he commenced employment as a "Scientist III" in February 2023.[2] While this new evidence corroborates the Petitioner's claimed annual salary with his new employer, it cannot establish that he satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ix) at the time he filed this petition in June 2021. As noted in our prior decision, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. 8 C.F.R. § 103.2(b)(1). A visa petition cannot 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).

Here, the Petitioner has not provided new facts that would overcome our dismissal of the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen that decision. Accordingly, the motion to reopen will be dismissed.

With respect to the motion to reconsider, the Petitioner does not claim on motion that our prior decision, dismissing the previous combined motions, was based on an incorrect application of law or policy or that it was incorrect based on the evidence in the record at the time of our decision. In fact, his statement in support of the motion contains no reference to our prior decision. Rather, the Petitioner provides a table listing the evidence and arguments he asserts establish his eligibility under six criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, and in support of his prior combined motions, he provided a nearly identical chart. While the Petitioner continues to maintain he submitted sufficient evidence to establish eligibility for the requested classification, he cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions or repeating arguments that have already been considered in previous decisions; the motion must demonstrate how we erred as a matter of law or policy in our last decision. *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").

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

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[2] The record reflects that the Petitioner submitted supplemental evidence related to the criterion at 8 C.F.R. § 204.5(h)(3)(ix) in July 2023, approximately three months after filing this motion. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to our office in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R § 103.5(a)(2) and (3). We note that this supplemental evidence also relates to the Petitioner's claim that he earns a high salary based on his current employment as a scientist III, a position he assumed after the denial of the petition. As observed above, even if we considered this evidence, it could not demonstrate the Petitioner satisfied the plain language of this criterion at the time of filing or provide proper cause for reopening.

of motion under 8 C.F.R. § 103.5(a)(3). We will not re-adjudicate the petition anew and, therefore, the motion to reconsider will be dismissed.

In sum, although the Petitioner has submitted additional evidence in support of the motion to reopen, he has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.