U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29200858

Date: DEC. 06, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a former professor, 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 Texas Service Center denied the petition in 2012 and dismissed two subsequent motions in 2012 and 2013, respectively, concluding that the Petitioner had not satisfied the initial evidence requirements for this immigrant visa classification by providing evidence of his receipt of a major internationally recognized award or by satisfying at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). In 2014, we dismissed the Petitioner's appeal of the Director's 2013 decision. We have since adjudicated fifteen motions filed by the Petitioner between 2014 and 2023. Most recently, we dismissed a motion to reconsider on June 8, 2023. 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 both motions.

In our latest decision, we determined that the Petitioner's fifteenth motion did not meet the requirements of a motion to reconsider as stated at 8 C.F.R. § 103.5(a)(3). While we acknowledged that the Petitioner submitted a brief and summarized the assertions he made therein, we concluded that those assertions did not demonstrate how we incorrectly applied the law or USCIS policy in our immediate prior decision dated February 2, 2023, in which we dismissed his fourteenth motion.

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).

In support of the current motion, the Petitioner has submitted a brief, copies of his previous motion filings, and copies of previous USCIS receipt notices, transfer notices, and decisions issued by the Director and by our office. The previous motions, corresponding decisions, and other notices are already part of the record and are not new evidence that could provide proper cause for reopening the proceeding. Further, although the Petitioner submits a brief, he does not state any new facts that would warrant reopening. Accordingly, his submission does not meet the requirements of a motion to reopen.

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.

On motion, the Petitioner asserts that we incorrectly stated in our June 8, 2023 decision that we had dismissed his 14 previous motions.[1] The Petitioner emphasizes that he has filed "much more" than 14 previous motions, suggests that we "ignored" certain motions, and maintains that USCIS "needs to find the missing motions" and approve his case.

As noted, this motion includes documentation related to the Petitioner's previous motion filings. While it is true that the Petitioner had filed more than 14 prior motions at the time we issued our latest decision, the record reflects that some of these motions were filed in connection with the denial of his Form I-485, Application to Register Permanent Residence or Adjust Status and associated applications for employment authorization, while the first two motions filed in connection with this petition pre-dated the filing of the Petitioner's appeal and were adjudicated by the Director. None of these additional motions fell under our jurisdiction and were therefore not included in our summary of the procedural history of the Petitioner's case. We have adjudicated the Petitioner's initial appeal and all 15 motions that fell under our jurisdiction and the record reflect that all other motions were adjudicated by the USCIS office with jurisdiction over them. The record does not support the Petitioner's claim that certain motions were ignored, are missing, or otherwise remain unadjudicated.

The Petitioner further asserts that our latest decision dismissing his fifteenth motion "didn't answer any facts" he submitted in support of his motion to reconsider, did not include a final merits determination as described in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), and did not consider that all the evidence submitted to date "met more than 100% of the requirements of USCIS" and should have resulted in the approval of his petition.

We emphasize again that by regulation, the scope of a motion to reconsider is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The Petitioner's fifteenth motion was not a motion to reconsider

[1] The Petitioner also objects to our statement that we "dismissed" 14 prior motions, noting that some of those motions were "denied" while others were "dismissed." The Petitioner claims that there is a distinction between a motion that is "dismissed" as opposed to "denied," but provides no legal support for the assertion. While the AAO has used both terms interchangeably over the course of adjudicating the Petitioner's 15 prior motions, we discern no difference in the outcome. *See* 8 C.F.R. § 103.5(a)(4) ("A motion that does not meet applicable requirements shall be dismissed."). While inconsistent, we deem this to be a harmless error at most, as it did not affect the outcome of the decision and has not prejudiced the Petitioner.

the denial of the petition or any other earlier decision; our scope of review was limited to our decision dismissing the fourteenth motion.

As noted, in our latest decision, we acknowledged and briefly summarized the Petitioner's various claims that he is eligible for classification as an individual of extraordinary ability. However, as we explained in the decision, none of the Petitioner's assertions in the previous motion demonstrated how we erred in our immediate prior decision dismissing his fourteenth motion, and therefore did not establish that the decision was based on an incorrect application of law or policy, as required to meet the requirements of a motion to reconsider at 8 C.F.R. § 103.5(a)(3). In adjudicating the Petitioner's fifteenth motion, we were not required to consider new objections to the earlier denial, new allegations of error at prior stages of the proceeding or claims of eligibility that had already been addressed on appeal and in our prior motion decisions. The Petitioner has not cited any relevant law, precedent, or USCIS policy in support of his claim that we were required to address every point raised in his brief or to conduct a de novo review of the entire record of proceeding. We have reviewed the Petitioner's prior motion to reconsider and confirm that it contained no specific claim that our dismissal of the fourteenth motion was based on an incorrect application of law or policy. Therefore, the Petitioner has not established that we improperly dismissed the fifteenth motion.

The Petitioner's remaining 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 and, therefore, the underlying petition remains denied.

The Petitioner has not established new facts sufficient to overcome our previous decision. Nor has he established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Consequently, the Petitioner has not met the applicable requirements for either a motion to reopen or a motion to reconsider. 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.