U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24782988

Date: FEB. 22, 2023

Motion on Administrative Appeals Office Decision

Form I-129, Petition for a Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a former professor at Brown Mackie College, 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. In 2014, we dismissed the Petitioner's appeal of the Director's 2013 decision. We have since dismissed thirteen motions filed by the Petitioner since 2014. Most recently, we dismissed his combined motion to reopen and reconsider on September 1, 2022. The matter is now before us on a motion to reopen and reconsider our prior decision.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reopen and reconsider.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence.[1] 8 C.F.R. § 103.5(a)(2). A motion to reconsider is based on an incorrect application of law or policy.[2] 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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[1] Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323, (1992) (citing *INS v. Abudu*, 485 U.S. 94, 108 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *Id.* at 110.

[2] The Board of Immigration Appeals (BIA) generally provides that a motion to reconsider asserts that at the time of the previous decision, an error was made. It questions the decision for alleged errors in appraising the facts and the law. The very nature of a motion to reconsider is that the original decision was defective in some regard. *See Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991).

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition. Instead, it is a motion to reopen and reconsider our most recent decision, the September 1, 2022 dismissal of the Petitioner's thirteenth motion. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

On motion, the Petitioner submits a statement generally asserting his eligibility as an individual of extraordinary ability, but does not explain or point to any factual, legal or policy error in our prior decision. The Petitioner states that President Biden's February 2, 2021 fact sheet ("President Biden Outlines Steps to Reform Our Immigration System by Keeping Families Together, Addressing the Root Causes of Irregular Migration, and Streamlining the Legal Immigration System,") supports reopening these proceedings because it outlines the administration's mission to eliminate barriers to immigration and to "not let immigrant visas go to waste." Review of the President's fact sheet shows that it announced three steps (create a task force to reunify families; develop a strategy to address irregular migration across the southern border and create a humane asylum system; and restore faith in our legal immigration system and promote integration of new Americans) however, none of these pertain to the issuance of visas to individuals, like the Petitioner, who are self-petitioning as individuals of extraordinary ability.

Next, the Petitioner asserts that three "Special Masters Lawyers" have reviewed his credentials and determined that he meets the criteria found at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner does not provide any evidence to establish who these "Special Masters Lawyers" are or how they determined his credentials were sufficient to establish his eligibility for an extraordinary ability visa. He also requests approval of his visa petition because the "loss of available employment-based immigrant visas harms employers and foreign nationals." These statements, however, are insufficient to be considered new facts. In addition, these assertions do not pertain to any error of law or policy in our prior decision.

The Petitioner also claims eligibility under the second preference visa classification as a member of the professions holding an advanced degree or a noncitizen of exceptional ability seeking a national interest waiver and requests that we convert his first preference petition to a second preference national interest waiver petition. Again, this request neither establishes a new fact nor establishes that our prior decision was based on an error of law or policy. Further, we will not entertain a request for a change of classification for a petition that has already been adjudicated. A post-adjudication alteration of the requested visa classification constitutes a material change. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The Petitioner also cites to chapters 40.9.2(b)(2) and 40.9.2(b)(3) of the Adjudicator's Field Manual to assert that he has maintained lawful status in the United States during the pendency of his petition and subsequent appeal and motions. As this does not address any of the issues raised in our prior decision, or establish a new fact, we will not reopen or reconsider our prior decision on this basis.

As before, the Petitioner again lists his credentials under the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, this recitation of his credentials does not explain or point to any factual, legal or policy error

in our prior decision. His reference to a social media post by an individual who states he only received an elementary school education and request to understand how this individual received an extraordinary ability visa, whereas he has seven university degrees, and has been deemed ineligible, does not address the basis for our prior decision. As we explained, the fact that he may have seven educational degrees is insufficient to establish eligibility unless he establishes how his "academic degrees fulfill any specific criterion at 8 C.F.R. § 204.5(h)(3)(i)-(x)." His request for an explanation of how someone with less education may have received an immigration benefit is beyond the scope of a motion to reopen and reconsider, and does not establish proper cause for granting either motion.

Finally, we note that the Petitioner has still not addressed our questions surrounding his claimed international "Innovare Award" in 2005, as it appears the international version of the award did not exist prior to 2010. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

Therefore, we will dismiss the Petitioner's motion to reconsider because he does not establish that we erred in our prior decision. *See* 8 C.F.R. § 103.5(a)(3). In addition, we will dismiss his motion to reopen because he has not provided evidence of new facts related to our prior decision. *See* 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.