U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23792156

Date: JAN. 11, 2023

Motion on Administrative Appeals Office Decision

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

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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), requiring 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, and we rejected that as improperly filed.

He then filed four subsequent combined motions to reopen and reconsider, which we also dismissed. The matter is now before us on another combined motion to reopen and motion to reconsider. 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 combined motions.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration, establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and demonstrate that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). According to the Instructions for Notice of Appeal or Motion (Form I-290B, Notice of Appeal or Motion), any new facts and documentary evidence must demonstrate eligibility for the required immigration benefit at the time the application or petition was filed. A motion to reopen that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The procedural history relating to this filing is lengthy and it is not necessary for us to restate it here. We incorporate the history by reference from our previous discussion on the matter. 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)). 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 issues here 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 fifth combined motion to reopen and reconsider. And the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the decision on their fifth 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) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references 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.

In the present motion, the Petitioner addresses numerous decisions throughout this process, but he does not directly take on our most recent dismissal of his motions in our May 6, 2022 decision. He discusses our 2018 summary dismissal partly dismissed for a lack of a follow-on brief, claims he mailed that brief to us in a timely manner, and discusses delays in filing a subsequent motion and any reasonable reasons for that delay. He also references our July 2020 decision on his third motion and turns his other arguments to the merits of the Director's initial decision from August 2018. The Petitioner's opportunity to make the arguments relating to these past decisions was in the filing that immediately followed each of those decisions. We reiterate that the Petitioner must first address the contents of our most recent decision from May 2022, but he does not adequately do so here.

For these reasons, we determine the Petitioner has not overcome our reasoning within his fifth 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 May 2022 dismissal.

Generally, when a previous motion was dismissed because the filing party failed to meet the regulatory requirements of a motion, a subsequent motion filing must first overcome the shortcomings within the decision that immediately preceded the current filing. And after a filing party has filed a significant number of motions, it becomes increasingly difficult to overcome each sequential preceding

decision—in seriatim fashion—to eventually return to the eligibility claims they originally asserted. In some instances, simply refiling a new petition could be a more expeditious and less burdensome method to possibly receive a favorable decision on a petition. While we do not suggest that this Petitioner should abandon his efforts of filing future motions with this office and instead file a new petition, it is a factor he may wish to consider.

The Petitioner has not demonstrated that we should either reopen the proceedings, nor has he established we should reconsider our May 6, 2022 decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.