U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24187550

Date: JAN. 11, 2023

Motion of Administrative Appeals Office Decision

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

The Petitioner, an administrative services manager, seeks classification as an alien 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 record did not establish the Petitioner met the initial evidence requirements of this classification through either evidence of a one-time achievement (a major, internationally recognized award), or meeting three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3). We dismissed the Petitioner's appeal from that decision, as well as three subsequent combined motions to reopen and reconsider. The matter is now before us on a fourth motion to reopen and reconsider.

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

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) 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). We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

The scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Accordingly, we examine any new arguments to the extent that they pertain to our dismissing the Petitioner's third motion to reopen, and whether we erred in determining that the Petitioner did not establish that we incorrectly applied law or policy in dismissing the third motion to reconsider.

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)); *see also Selimi v. Ashcroft*, 360 F.3d 736, 739 (7th Cir. 2004). There is a strong public interest in bringing proceedings to a close as promptly as is consistent with giving both parties a fair opportunity to develop and present their respective cases. *INS v. Abudu*, 485 at 107.

On motion, the Petitioner submits a brief. The Petitioner provides a brief description of her work experience and some highlights of her achievements that have been previously outlined in the record. Since the current motion to reopen does not include new facts or new evidence, the motion does not meet the requirement of a motion to reopen and must be dismissed.

Regarding the motion to reconsider, we stress again that in order to have established merit for reconsideration of our latest decision the petitioner must both state the reasons why the petitioner believes the most recent decision was based on an incorrect application of law or policy; and specifically cite laws, regulations, precedent decisions, and/or binding policies that the petitioner believed we misapplied in our prior decision.

In this case, the prior decision at issue is our decision dated May 26, 2022, whereby we dismissed the motion to reconsider since the brief submitted with the third motion was almost identical to the brief submitted with the second motion. The current motion brief states that we abused our discretion by applying the incorrect legal standard but did not provide any evidence to support this claim. To prevail in a motion to reconsider, the petitioner cannot merely disagree with our conclusions, but rather it must demonstrate how we erred as a matter of law or policy in our immediate prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit in essence, the same brief and seek reconsideration by generally alleging error in the prior decision.)

Accordingly, although we acknowledge that the Petitioner submits a brief, we determine that the Petitioner does not directly address the conclusions we reached in our immediate prior decision or provide reasons for reconsideration of those conclusions. Likewise, the brief in support of the current motion also lacks any cogent argument as to how we misapplied the law or USCIS policy in dismissing the prior motion to reconsider.

In light of the above, we conclude that this motion does not meet all the requirements of a motion to reconsider and must therefore be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

In this matter, the Petitioner has not overcome our prior decision or shown proper cause to reopen or reconsider this matter. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.