U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25965834

Date: MAR. 22, 2023

Motion on Administrative Field Office Decision

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

The Petitioner, a city branding expert, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements through evidence of a one-time achievement, or, in the alternative, evidence that satisfied at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Director also determined that the Petitioner had willfully misrepresented material facts with respect to her authorship record. The Petitioner subsequently filed a combined motion to reopen and motion to reconsider, which the Director dismissed as untimely filed. We then dismissed the Petitioner's appeal of the Director's motion decision, concluding that the Director appropriately dismissed the motion to reopen as untimely since the Petitioner had not established that the delay in filing was reasonable and beyond her control.[1] The matter is now before us on combined motions to reopen and reconsider. 8 C.F.R. § 103.5.

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.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] *In Re* 21340921 (AAO Sep. 28, 2022)

A motion to reconsider must establish that our 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).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, "new facts" are facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

II. ANALYSIS

We first note that the issue of the Petitioner's eligibility for classification as an individual of extraordinary ability is not before us. The sole issue before us on the combined motions pertains to our conclusion that the Director's dismissal of the Petitioner's previous combined motions was appropriate.

The Petitioner argues, as she did on appeal, that the untimely filing of her first motion was both reasonable and beyond her control due to confusion about guidance issued by U.S. Citizenship and Immigration Services (USCIS) which extended the period for filing of Form I-290B during the COVID-19 pandemic. Specifically, she references the initial USCIS announcement of March 27, 2020 which extended the due dates for requests for evidence (RFEs) and notices of intent to deny (NOIDs) by 60 days, and a subsequent announcement on March 30, 2020 which expanded this flexibility to include Forms I-290B filed within 60 days of the underlying decision. She states that the differing language between these two announcements caused confusion which led to human error and the late filing of the initial combined motions. The Petitioner further asserts that because USCIS announced on December 30, 2021 that the period for filing Form I-290B was temporarily extended to 90 days after the date of the underlying decision, this constituted an admission that the original guidance was confusing, and thus shows that the delay in her filing was reasonable and beyond her control.

As we noted in our previous decision in this matter, the announcements which the Petitioner refers to on appeal were no longer in effect on the date of the decision, March 2, 2021, having expired in May 2020. In addition, the change to allow Form I-290B to be filed within 90 days of the underlying decision was not announced until more than nine months after the underlying decision, and the Petitioner provides no support for her assertion that this was done to address any confusion from the preceding announcements. She has therefore not established that her delay in filing the initial combined motions was reasonable and beyond her control.

The Petitioner also repeats her assertion that to deny her an opportunity to rebut the finding of willful misrepresentation would be unfair, especially considering the consequences of this finding. However, as we stated in our previous decision, she has not shown that her ability to respond to the Director's decision by motion was in any way hampered by the COVID-19 pandemic, and the record indicates that she had gathered additional evidence for submission well before the filing deadline for motions and appeals of May 4, 2021. As the Petitioner has not established that our previous decision was based on an incorrect application of law or policy, we will dismiss the her motion to reconsider.

Turning to her motion to reopen, the documents submitted with this motion were also included with her appeal, and the Petitioner does not refer to new facts which were not previously considered. As she has therefore not met the requirements for a motion to reopen, we will dismiss this motion as well.

III. CONCLUSION

The Petitioner has not established that our previous decision was in error based upon the record at the time of filing or was based on an incorrect application of law or policy. In addition, she has not submitted new facts. We will therefore dismiss her motion to reconsider and her motion to reopen.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.