U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 25295809

Date: MAR. 28, 2023

Motion of Administrative Appeals Office Decision

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

The Petitioner, a sound engineer and technical director, 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 subsequently dismissed the Petitioner's appeal from that decision. The matter is now before us on a combined 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 motions.

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).

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. *Abudu*, 485 at 107.

On motion, the Petitioner submits a new statement; an article about his patent and a copy of the patent; an employment contract evidencing his position as senior sound director for the 2019 [redacted] and information about that event; the charter of the [redacted] and minutes regarding the Petitioner's acceptance as a member; and, a letter from the television channel '[redacted]' confirming the employment of the Petitioner as a senior sound director with information about the '[redacted]' channel.

We do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean those that are relevant to the issues raised on motion and that have not been previously submitted in the proceeding, which includes within the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

Although most of the documents the Petitioner submits on motion were not previously submitted, they do not introduce new facts since the same information presented in these documents was submitted with the initial petition, just in different documents. The evidence on motion further confirms evidence previously submitted and is not considered new facts.

The only documentation submitted on motion that was not previously discussed is the Petitioner's membership in the [redacted] However, the Petitioner does not explain the relevance of this documentation in his motion brief. The Petitioner never claimed eligibility under 8 C.F.R. § 204.5(h)(3)(ii) for membership in associations requiring outstanding achievements of their members. As it relates to a motion to reopen, the requirement for "new facts" pertains to new information associated with the eligibility claims a filing party presented in their most recent filing, in this case, on appeal. A motion to reopen should not act as a vehicle to introduce new eligibility claims for the first time. These two concepts (new facts versus new eligibility claims) are distinct and are not interchangeable. New eligibility assertions advanced for the first time to an administrative appellate body are not before it properly. *Matter of M-F-O-*, 28 I&N Dec. 408, 410 n.4 (BIA 2021) (refusing to consider an appellant's humanitarian claims presented for the first time on appeal).

The Petitioner therefore has not satisfied the requirements for a motion to reopen. Specifically, he has not offered new facts associated with his previous eligibility claims that are also supported by evidence. The result of this shortcoming is that the Petitioner has not demonstrated that we should reopen the proceedings.

Regarding the motion to reconsider, we stress again that to establish 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 it must also specifically cite laws, regulations, precedent decisions, and/or binding policies it believes we misapplied in our prior decision.

The current motion brief states that the prior decision lacks thorough analysis and demanded excessive proof of eligibility that goes beyond the standard of proof required by the regulations. However, the Petitioner did not provide sufficient evidence to support these claims. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *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, even if the Petitioner had argued that we failed to give the evidence full consideration, we would still deny the motion to reconsider because the argument would lack the specificity required for a motion to reconsider.

Accordingly, although we acknowledge the Petitioner submits a brief, we determine 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.

On motion, the Petitioner also contends we erred in our decision by waiving issues the Petitioner did not discuss on appeal. Our review of the record reveals although the Petitioner collectively asserted his claims before the Director, he failed to offer all of those same claims in his appeal. When he failed to assert any previous claims within his appeal, he abandoned or waived those claims. Furthermore, the Petitioner did not provide any evidence on appeal regarding the waived issues. *See Matter of Valdez*, 27 I&N Dec. 496, 496 n.1 (BIA 2018) (concluding that an issue is deemed waived when it is not challenged). This means we will not factor those abandoned claims into this or any future motion decision based on this particular petition. He is, however, eligible to reintroduce these claims in a future petition filing (i.e., a new Form I-140).

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.