U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35565821

Date: DEC. 12, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner 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, concluding that the Petitioner did not meet the initial evidentiary requirements for this classification through presentation of evidence of either a one-time achievement or evidence showing that he meets at least three of the alternative evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). We summarily dismissed the Petitioner's subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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 the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior 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). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(l)(i), (ii). We may grant motions that satisfy the aforementioned requirements and demonstrate eligibility for the requested benefit.

On August 23, 2024, we summarily dismissed the Petitioner's appeal because it did not specifically identify any erroneous conclusion of law or statement of fact in the Director's unfavorable decision dated February 29, 2024. *See* 8 C.F.R. § 103.3(a)(1)(v). Rather, the Petitioner alleged in a conclusory manner on the Form I-290B, Notice of Appeal or Motion, that the Director erroneously denied the petition and indicated that he would submit a brief and/or additional evidence to our office within 30 calendar days of filing the appeal. The record did not show that we had received these supplemental materials as of August 2024.

On motion, the Petitioner asserts that he timely submitted a brief in support of his appeal, and we failed to consider it. He submits a copy of a brief dated April 15, 2024, a copy of a Federal Express mailing label with a tracking number, and proof that the package was delivered on April 16, 2024. However, the newly submitted evidence indicates that the Petitioner's supplemental appeal brief was incorrectly sent to the USCIS Vermont Service Center rather than the Administrative Appeals Office (AAO). Any brief and/or evidence submitted after the filing of an appeal must be sent directly to the AAO as required by the regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the filing instructions for the Form I-290B. The Petitioner has not demonstrated that he complied with these requirements when submitting his supplemental brief.

The Petitioner requests that we consider the arguments presented in his appellate brief challenging the Director's February 29, 2024, decision, as the brief is now incorporated in the record. However, the only decision properly before us on motion is our August 23, 2024, decision, and not the Director's earlier decision denying the petition. *See* 8 C.F.R. § 103.5(a)(1)(i), (ii) (requiring that motions pertain to "the prior decision" or "the latest decision").

Here, the evidence provided on motion does not establish new facts relevant to our appellate decision that would warrant reopening of the proceedings. Further, the Petitioner has not demonstrated that our summary dismissal was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. Consequently, as the Petitioner has not established proper cause for reopening or reconsideration of our prior decision, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4). The Petitioner's appeal therefore remains dismissed, and the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.