U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31764796

Date: JUL. 12, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a former professor, 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 in 2012, and dismissed two subsequent motions in 2012 and 2013, respectively, concluding that the Petitioner had not satisfied the initial evidence requirements for this immigrant visa classification through evidence of his receipt of a major, internationally recognized award or by meeting at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). In 2014, we dismissed a subsequent appeal. We have since adjudicated sixteen motions filed by the Petitioner between 2014 and 2023, and most recently dismissed combined motions to reopen and reconsider on December 6, 2023. 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits a brief and a copy of our most recent decision. As our decision is already a part of the record, it is not new evidence that could provide proper cause for reopening this matter. In his brief, he asserts that in our previous decision we misstated the number of motions he has filed in this matter, adding an extra motion, and that this is a new fact that justifies reopening the decision. We initially note that this assertion is not supported by documentary evidence, as is required of a motion to reopen. The copies of previous notices and decisions that he relies upon in support of

this assertion were submitted with his previous motion to reopen, and as we explained in our decision dismissing that motion, were already a part of the record and thus did not reflect new facts.

Regardless, the Petitioner's assertion is based upon his own list of the dates of our decisions on motions issued prior to his previous motion, which includes fourteen dates but omits our decision of June 8, 2023. Our most recent previous decision therefore correctly referred to the fifteen previous motions on its first page, and to the fourteen motion dismissals we issued in this matter prior to our decision of June 8, 2023 on its second page.

Further, even if the Petitioner was correct about the number of motions he has filed, which he is not, he does not explain how this would have been material to his eligibility for classification as an individual of extraordinary ability. As the Petitioner has not stated any new facts that establish his eligibility and would warrant reopening, and has not submitted documentary evidence to support his assertion, his submission does not meet the requirements of a motion to reopen.

Turning to the Petitioner's motion to reconsider, such a motion 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). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

In his brief, the Petitioner contests the correctness of our prior decision by referring to our decision of December 15, 2014 and evidence he has submitted over the past ten years, asserting that it demonstrates that he meets the initial evidence requirement for the requested classification by meeting three of the evidentiary criteria. But as noted above, our review on motion is limited to reviewing our latest decision on the Petitioner's sixteenth motion, not the numerous decisions we have issued earlier. And as we explained in our decision on the Petitioner's sixteenth motion, as well as in previous motions, we will not re-adjudicate the petition anew on motion. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56,58 (BIA 2006) ("a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior Board decision").

The Petitioner also asks us to apply policy guidance regarding the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) which was issued on September 12, 2023 and pertained to the evaluation of evidence in the science, technology, engineering and math (STEM) fields. He reminds us that the record shows that he studied civil engineering, and asserts that U.S. Citizenship and Immigration Services "typically takes a favorable look at accomplished individuals in STEM-related fields." But the Petitioner does not elaborate on how his completion of a handful of introductory courses in a civil engineering curriculum supports his eligibility for this classification as a professor of law and economics. *Cf. Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support). And again, this request seeks a *de novo* reevaluation of the entire record, and does not focus on any error in the analysis provided in our most recent decision.

The Petitioner has not established new facts sufficient to overcome our previous decision. Nor has he established that our previous decision was based on an incorrect application of law or policy at the

time we issued our decision. Consequently, the Petitioner has not met the applicable requirements for either a motion to reopen or a motion to reconsider. The motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.