U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37689705

Date: APR. 28, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks employment-based second preference (EB-2) immigrant 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.

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner did not establish that he meets the initial evidence requirements for this classification, either through his receipt of a major internationally recognized award, or, in the alternative, by submitting evidence that satisfies at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3). Subsequently, we summarily dismissed the Petitioner's appeal and dismissed his motions to reopen and reconsider. The matter is now before us again on a second combined motion 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 the motion.

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).

The scope of any motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, our analysis for the combined motion is limited to the following: (1) whether the Petitioner establishes that the dismissal of the previous combined motion was based on an incorrect application of law or policy; or (2) whether the Petitioner presents a new fact, supported by evidence, that shows proper cause to reopen our decision on the previous combined motion. 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). Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. See INS v. Doherty, 502 U.S. 314, 323 (1992) (citing INS v. Abudu, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." See INS v. Abudu, 485 U.S. at 110.

For the motion to reopen, the Petitioner has not stated any new facts or submitted additional evidence to establish that we erred in dismissing the prior combined motions. In his Form I-290B, Notice of Appeal or Motion, the Petitioner states that he "will submit a detailed brief and more evidence." No brief or additional evidence was submitted by the Petitioner. Because the Petitioner has not established new facts that would warrant the reopening of the proceeding, we have no basis to reopen our prior decision. The motion to reopen will be dismissed. 8 C.F.R. § 103.5(a)(4).

For the motion to reconsider, the Petitioner has not established 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. With his motion, the Petitioner did not submit a brief and instead only included a statement requesting we reconsider our dismissal of the motion to reopen, arguing it "was erroneous because new evidence was submitted and the requirements for motion to reopen was (sic) met." He further contends that he meets at least three criteria but does not provide arguments to support his assertion.

The purpose of a motion to reconsider is to show error in the most recent prior decision. In our prior motion decision, we determined the Petitioner did not show proper cause for the reopening and reconsideration of our prior summary dismissal of his appeal. As noted in our motion decision, the Petitioner did not contest or show error in the reasons for the summary dismissal. Although he submitted new facts related to his qualifications for the classification sought, the evidence was unrelated to the reasons for the summary dismissal of the appeal. Moreover, we noted that the Petitioner raised for the first time on motion that SCOPS erred in its denial of the underlying petition and, as such, we did not conduct a de novo review or address the merits of the underlying petition absent a showing that we summarily dismissed the appeal in error.

The scope of a motion is limited by regulation to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). In his prior motion, the Petitioner did not contest our summary dismissal of his appeal. Because the new facts and evidence submitted with the Petitioner's prior motion were unrelated to the reasons for the summary dismissal of the appeal, we did not need to conduct a de novo review or address his qualification for the underlying classification with the new facts and evidence presented with his prior motion. In this motion to reconsider, the Petitioner does not specify how our prior motion 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. Accordingly, we will dismiss the motion to reconsider.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.