U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35908213

Date: JAN. 10, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner is a lawyer who 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that she received a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. The Petitioner filed a subsequent combined motion to reopen and reconsider that the Director dismissed. The matter is now before us on appeal under 8 C.F.R. § 103.3. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

We begin any appeal ensuring the filing party identifies an erroneous conclusion of law or statement of fact within the most recent decision in a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v), 103.3(a)(2)(i)–(iv). This applies to appeals of adverse conclusions on petitions and applications or appeals of adverse decisions on motions. Under that framework, we look to whether the Director met their responsibilities for that particular type of decision (e.g., petition denials or revocations versus motion dismissals). When it comes to motions, we evaluate the following:

1. For a motion to reopen at 8 C.F.R. § 103.5(a)(2) we consider whether the Petitioner stated new facts and supported those facts with documentary evidence; and
2. For a motion to reconsider at 8 C.F.R. § 103.5(a)(3) we consider whether the Petitioner established the Director's prior decision was based on an incorrect application of law or policy, and whether the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

As a result, we consider whether the Petitioner has demonstrated that the Director improperly dismissed the motion to reopen and reconsider.

But here, the Petitioner's appeal brief only addresses the original petition denial discussing her eligibility, while the most recent decision from the Director was their determination that the combined motion failed to meet the requirements of either type of motion. It was that latest determination that the Petitioner must address first in this appeal, and only after showing the Director was incorrect in their motion decision may they request we evaluate their eligibility under the merits discussed in the original petition denial.

In other words, she argues on appeal why she believes the Director's petition denial was incorrect instead of why the Director's motion dismissal was performed in error. So, her failure to address why the Director's motion dismissal contained any erroneous conclusion of law or statement of fact is a singularly sufficient basis to dismiss her appeal. This shortcoming means this appeal also warrants a summary dismissal according to the regulation at 8 C.F.R. § 103.3(a)(1)(v).

Further, because the most recent decision was related to the motions and not to the petition filing, when the Petitioner did not contest any issue within the Director's motion decision, she abandoned her claims relating to those issues. *E.g.*, *Matter Khan*, 28 I&N Dec. 850, 852 n.4 (BIA 2024) (finding a topic is waived that was an issue before the lower adjudicative body but the filing party does not raise it on appeal).

ORDER: The appeal is dismissed.