U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36192366

Date: JAN. 30, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks first preference immigrant 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).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). We dismissed a 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 motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The scope of a motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Therefore, we will only consider new evidence to the extent that it pertains to our latest decision. We may grant motions that satisfy the 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). Here, the Petitioner has not provided any new evidence to accompany the motion, and the motion does not state new facts to establish that we erred in dismissing the prior motion. As such, we have no basis to reopen our prior decision.

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). 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.

On motion, the Petitioner contests the correctness of our prior decision. The motion states that the prior decision contained significant errors, and that it was "apparent from the language of the decision that the Petitioner has been held to an inappropriately high standard." To support that statement, the

brief points to our prior decision's use of the statement: "they must provide sufficient qualifying documentation," which the Petitioner argues suggests "personal judgement and opinion, which signals the application of an unreasonably high bar." The decision states that if a petitioner does not submit evidence of a one-time achievement, they "must provide sufficient qualifying documentation" that meets three of the ten criteria as outlined under 8 C.F.R. § 204.5(h)(3). The Petitioner has not explained how requesting sufficient documentation to establish eligibility for an immigration benefit imposes "an unreasonably high bar." *See* 8 CFR §103.2(b)(1) (stating that a petitioner must establish eligibility for the requested benefit). The Petitioner does not elaborate, beyond the above statement, where such a standard was applied. Our review of the decision and the record finds no instances of us applying a stricter standard as the Petitioner asserts.

Concerning the lesser award criterion at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner argues that our prior decision overlooked aspects of the Petitioner's achievements and that the evidence presented was sufficient. The Petitioner alleges error in our reliance on the persuasive case of *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 182-83 (D.N.J. 2021), which we cited to support the assertion that it is reasonable for the Service to require evidence that the award is merit-based. We have reviewed the *Krasniqi* case and determine that our prior citation was correct. As stated in our prior decision, the certificates and other evidence in the record denote that the Petitioner received the certificates for participation and not for excellence in the field. The Petitioner makes further arguments that he qualifies for the criterion but does not point to any further law or policy in support. Disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reconsider our decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006).

The motion's discussion on the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii) avers that our analysis of what is leading or critical was too narrow. However, the Petitioner does not point to any incorrect application of law or policy made in our prior decision. As noted above, disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reconsider our decision. *See e.g., Matter of O-S-G-*, 24 I&N Dec. at 58.

Finally, the motion asserts that our decision regarding the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix) was made in error. This criterion requires a petitioner to show they have "commanded a high salary or other significantly high remuneration for services, *in relation to others in the field*." 8 C.F.R. § 204.5(h)(3)(ix) (emphasis added). To support his claim to this criterion the Petitioner previously submitted a letter from his employer attesting to his salary and information on conversion to the dollar. The Petitioner's motion cites to *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010) and alleges that the core principle in that case was that evidence be relevant, probative, and credible. He argues that evidence provided meets that standard and satisfies the criterion. As stated in our prior decision, the Petitioner did not meet the criterion as he did not provide evidence regarding the salary's comparison to others in the field as required by the criterion's plain language.[1] We see no error in this determination.

[1] The motion stated that the Petitioner's salary was high in relation to others in the field but cited to no evidence to support that claim. It is well established that contentions require support to underpin them, as assertions themselves do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

The Petitioner has not submitted any evidence to support the motion to reopen. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.