U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37415652

Date: JUL. 02, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner, a musician, 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.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. SCOPS also concluded that the Petitioner had not submitted clear evidence that he is coming to the United States to continue work in the area of expertise. 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 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)(1)(i), (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).

In our decision on the Petitioner's appeal, we noted that he indicated that he would submit a brief within 30 days, and that as of the time of our decision, no further submission from the Petitioner had been received. As such, we issued a decision based upon a de novo review of the record, taking into account the Petitioner's comments on the Form I-290B, Notice of Appeal or Motion (appeal form), and an additional attachment.

With his combined motions, the Petitioner again includes comments on the form, referencing the "original denial" and stating that "evidence of the appeal and later submitted brief are included with this motion. The dismissal of the appeal of form I-140 denial indicates that a brief was never received, however, brief was timely filed and included here again."

In reviewing the record, no brief or additional documentation relating to his appeal was received by USCIS and added to the record, even following the issuance of our decision on his appeal. While the Petitioner provides a brief now with his motions and asserts that the brief was submitted, the brief is undated and does not include any corroborating evidence that his appeal brief was sent to USCIS prior to the issuance of our decision. Further, the Petitioner's statements included with his combined motions continue to address the SCOPS decision and he does not contend that our decision dismissing his appeal was in error, for any reason other than claiming that his appeal brief was in fact submitted. As noted above, our decision addressed the comments and arguments that the Petitioner included on the appeal form, which he also again presents here. 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)(1)(i), (ii).

Although the Petitioner has submitted a copy of what he claims is his appeal brief in support of the motion to reopen, the Petitioner has not established eligibility. 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 motions 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.