U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 35547186

Date: MAR. 11, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a geotechnical engineer, seeks classification as an individual of extraordinary ability in the sciences. Immigration and Nationality 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the classification's initial evidentiary requirements. The Petitioner filed a motion to reconsider under 8 C.F.R. § 103.5(a)(3), which the Director dismissed. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

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). 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

A motion to reconsider must state the reasons for reconsideration to 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).

Remanding a matter is appropriate when the Director does not fully explain the reasons for the dismissal so that the affected party has a fair opportunity to contest the decision and we have an opportunity to conduct a meaningful appellate review. *See Matter of M-P-*, 20 I&N Dec. 786, 787-88 (BIA 1994) (stating that motion dismissals that do not identify or fully explain their reasoning should be remanded in order to allow the affected party a meaningful opportunity to challenge their determinations on appeal). In this instance, the motion dismissal notice did not provide an adequate explanation of its conclusions. We will therefore remand this matter.

In support of his motion to reconsider, the Petitioner submitted a letter from his attorney. The Director, citing to *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) and *Matter of Ramirez-Sanchez*,

17 I&N Dec. 503, 506 (BIA 1980), noted the assertions of counsel do not constitute evidence, and concluded that the Petitioner did not state sufficient reasons for reconsideration because he only "provided essentially the same evidence and generally allege[d] error in the prior decision." He then dismissed the motion without further analysis.

As noted above, a motion to reconsider must "state the reasons for reconsideration . . . to establish that the decision was based on an incorrect application of law or [USCIS] policy . . .". 8 C.F.R. § 103.5(a)(3). Here, the attorney letter filed in support of the motion states reasons for reconsideration by specifying factual and legal issues that were allegedly decided in error or overlooked in the underlying denial. *See In re O-S-G-*, 24 I&N Dec. 56, 57-58 (BIA 2006) (describing the requirements of motions to reconsider). For example, the letter contends that the Director should not have solely relied on the Petitioner's citation counts when adjudicating his contributions to his field, but should have considered additional evidence submitted in support of this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v). *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual (stating that examples of relevant evidence for this criterion "include, but are not limited to" items such as documentation of citation levels).

Because the Petitioner proposed specific reasons for reconsidering the underlying petition denial, as required by 8 C.F.R. § 103.5(a)(3), the Director should evaluate these reasons in writing in the motion decision. *See Matter of M-P-*, 20 I&N Dec. at 787-88. Here, the dismissal notice only states that the Petitioner "did not provide sufficient reasons for reconsideration," without specifying what the provided reasons were or why they were insufficient. This does not provide an explanation of the Director's reasoning which allows the Petitioner to contest the decision on appeal or allows us to conduct a meaningful appellate review. *Id.* We will therefore remand this matter for the issuance of a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issues. We express no opinion regarding the ultimate resolution of this case on remand.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.