U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37244031

Date: MAR. 13, 2025

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks classification as an individual of extraordinary ability. *See* 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish he has received a one-time achievement or that he satisfies at least three of the alternative evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). We summarily dismissed the Petitioner's subsequent appeal. We then dismissed a combined motion to reopen and motion to reconsider. The matter is before us again on a combined motion to reopen and motion to 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 combined motion.

We summarily dismissed the appeal because the Petitioner did not specifically identify an erroneous conclusion of law or statement of fact in the Director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v). We then dismissed the Petitioner's combined motion to reopen and motion to reconsider because he did not establish that we erred by concluding he did not specifically identify an erroneous conclusion of law or statement of fact in the Director's decision, or that we misapplied a law or policy, based on the record at the time of our decision on the appeal. *See* 8 C.F.R. §§ 103.5(a)(2)-(3). More specifically, the Petitioner's prior combined motion established that he sent his brief to a location other than our office, contrary to the requirements at 8 C.F.R. § 103.3(a)(2) and the filing instructions for the Form I-290B, Notice of Appeal or Motion. *See also* 8 C.F.R. § 103.2(a)(1) (providing that every form or other document must be submitted in accordance with the applicable form's instructions).

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, on motion to reopen, we will consider new evidence only to the extent that it pertains to our latest decision. *See* 8 C.F.R. § 103.5(a)(2) (requiring a motion to reopen to state new facts and be supported by affidavits or other documentary evidence). Here, the

Petitioner has not provided new facts to establish that we erred in dismissing the prior combined motion. Rather, the Petitioner resubmits information he already submitted with the prior combined motion. Because the Petitioner has not established new facts that would warrant reopening the proceeding, the motion to reopen will be dismissed. *See* 8 C.F.R. §§ 103.5(a)(2), (4).

In turn, on motion to reconsider, the Petitioner asserts that we misapplied 8 C.F.R. § 103.3(a)(2). More specifically, the Petitioner asserts that we erred by referencing 8 C.F.R. § 103.3(a)(2)(viii) in our prior decision because he had not requested additional time to submit his appeal brief, beyond the 30-day submission period contemplated at 8 C.F.R. § 103.3(a)(2)(i). The Petitioner further asserts that he properly submitted his appeal brief "to the office identified on [his] I-290B receipt notice, which was the office with jurisdiction over [his] case at the time of filing the appeal."

The Petitioner incorrectly asserts on motion to reconsider that the office with jurisdiction over his case upon filing the appeal was an office other than ours. In the cover letter for the underlying decision on the Form I-140, Immigrant Petition for Alien Workers, the Director advised the Petitioner that we have jurisdiction on the appeal by stating, "If you disagree with this decision, you may appeal to the Administrative Appeals Office (AAO) by filing a Notice of Appeal or Motion (Form I-290B)."

Moreover, the regulation that the Petitioner cites in reference to the 30-day appeal brief submission period also directs affected parties to submit "any supporting brief as indicated in the applicable form instructions." 8 C.F.R. § 103.3(a)(2)(i). In relevant part, the instructions for Form I-290B direct appellants, "Select the box for Item Number 1.b. if you are not submitting a brief and/or additional evidence with your appeal, but you will submit a brief and/or additional evidence directly to the AAO within 30 calendar days of filing your appeal." The form instructions also state, "For appeals, any brief or additional evidence submitted after you file Form I-290B must be sent directly to the AAO, even if the appeal has not yet been transferred to the AAO." Thus, the applicable form instructions referenced by 8 C.F.R. § 103.3(a)(2)(i) direct appellants to submit any supporting brief directly to the AAO. *See also* 8 C.F.R. § 103.2(a)(1), *supra*.

Although the Petitioner correctly notes on motion to reconsider that 8 C.F.R. § 103.3(a)(2)(viii) applies to appeal briefs requested to be submitted beyond the 30-day submission period, nevertheless, 8 C.F.R. §§ 103.2(a)(1), 103.3(a)(2), and the filing instructions for the Form I-290B required him to submit his appeal brief directly to our office, which he concedes he did not do. Therefore, the Petitioner has not established on motion to reconsider that we misapplied a law or policy to the facts of record at the time of our prior decision by dismissing the prior combined motion to reopen and motion to reconsider, and the instant motion to reconsider will be dismissed. *See* 8 C.F.R. §§ 103.5(a)(3)-(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.