U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20299027

Date: MAY 16, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a martial artist who has competed in kickboxing and Muay Thai, 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.

The Director of the Texas Service Center denied the petition in November 2018, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision in December 2019, and three subsequent motions: a combined motion to reopen and reconsider, dismissed in August 2020; a motion to reconsider, dismissed in April 2021; and a combined motion to reopen and reconsider, dismissed in September 2021. The matter is now before us on another combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets the initial evidence requirements (through either a one-time achievement or meeting three lesser criteria), we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

III. ANALYSIS

As a preliminary matter, we note that by regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). The issue before us is whether the Petitioner has submitted new facts to warrant reopening or established that our decision to dismiss the previous motion was based on an incorrect application of law or policy.

The Director concluded that the Petitioner did not demonstrate that he received a major, internationally recognized award and that he satisfied only one of the ten lesser initial evidentiary criteria, pertaining to participation as a judge, as described at 8 C.F.R. § 204.5(h)(3)(iv). In dismissing the appeal, we withdrew the Director's determination relating to the judging criterion and concluded that the Petitioner did not fulfill any of the claimed criteria. We dismissed the first motion, concluding that the Petitioner requested us to reconsider our decision without showing how we erroneously applied law or policy. Further, while he provided additional documentation, we determined that the Petitioner did not establish that the new evidence demonstrated his eligibility for the judging criterion.

We dismissed the second motion because the Petitioner had simply repeated prior claims and arguments, without identifying any errors of law or policy in our first motion decision. We dismissed

the third motion because the Petitioner "did not demonstrate that we incorrectly dismissed his prior motion," and he did not establish the relevance of a newly submitted letter.

In his latest motion, the Petitioner submits no new evidence, and he states no new facts. Instead, he repeats previous assertions that do not overcome earlier conclusions. The bulk of the Petitioner's latest statement repeats, largely word-for-word, the Petitioner's assertions in prior submissions, including earlier briefs and his response to a request for evidence from 2018.[1] Repetition of prior claims does not introduce new facts into the record, and does not show proper cause for reopening the proceeding.

Similarly, a motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior appellate decision. The moving party must specify the factual and legal issues that were previously decided in error or overlooked in our prior decision, or must show how a change in law materially affects our prior decision. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). In earlier decisions, we have already advised the Petitioner that repetition of previous claims in this manner will not establish proper cause for reopening or reconsideration. The proper subject of the Petitioner's latest, fourth motion is our September 2021 decision dismissing his third motion. The Petitioner does not identify any specific errors in our September 2021 decision. Rather, he continues to generally assert eligibility on grounds already considered in our earlier decisions.

For the reasons discussed above, the Petitioner's motion to reconsider has not shown that our prior decision was based on an incorrect application of law or policy, and the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] At times, the latest statement indicates that a particular document "is attached," but this is apparently an earlier reference to an attachment to an earlier motion, which the Petitioner appears to have copied with the surrounding language.