



**U.S. Citizenship
and Immigration
Services**

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

In Re: 25610036

Date: FEB. 3, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), and we dismissed a subsequent appeal. We next dismissed five additional motions he filed and the matter is now before us on his sixth motion, which is a motion to reopen and reconsider. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon review, we will dismiss the combined motions.

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, establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and demonstrate that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). A motion that does not satisfy the applicable requirements must be dismissed. 8 C.F.R. § 103.5(a)(4).

The procedural history relating to this filing is lengthy and it is not necessary for us to restate it here. We incorporate the history by reference from our previous discussion on the matter. The issues here are whether the Petitioner: (1) has submitted new facts, supported by documentary evidence, to warrant reopening, and (2) has established that we incorrectly applied the law or USCIS policy in dismissing his fifth combined motion to reopen and reconsider. The dismissal basis within our most recent decision on the Petitioner's fifth motion was his failure to meet motion filing requirements in his fourth motion, and it was not related to his eligibility under this classification.

And the matters the Petitioner must first overcome within this motion are limited to the issues discussed within our most recent decision; the decision on their fifth motion. General support that a motion must first overcome the most recent decision lies within the regulation at 8 C.F.R. § 103.5(a)(1)–(3) where it repeatedly discusses the underlying or latest decision, it limits the time one has to file a motion after the most recent decision, and it references jurisdiction resting with the entity who made the latest decision. This demonstrates that any motion must first address and overcome the

most recent adverse decision before the filing party's arguments may move on to any issue that arose in a previous petition, appeal, or motion filing.

In the present motion, the Petitioner addresses numerous decisions throughout this process, but he does not directly take on our most recent dismissal of his motions in our October 31, 2022 decision. He discusses the merits of his petition filing harkening back to the Director's original January 2019 decision and our two subsequent decisions on his appeal and first motion. Those relate to the awards, membership, leading or critical role, and contributions of major significance claims. The Petitioner's opportunity to make the arguments relating to these past decisions was in the filing that immediately followed each of those decisions. We reiterate that the Petitioner must first address the contents of our most recent decision from October 2022, but he does not adequately do so here.

For these reasons, we determine the Petitioner has not overcome our reasoning within his fifth motion dismissal through new evidence in this motion to reopen, nor has he established that the decision was based on an incorrect application of law or USCIS policy necessary to meet the requirements for filing a motion to reconsider. Although the Petitioner generally asserts that USCIS failed to consider his documentary evidence, he does not address what material this office failed to consider in our October 2022 dismissal.

We also address the numerous motion filings based on the original petition. Multiple motion filings serve to thwart the strong public interest in bringing issues to a close, particularly in immigration proceedings where every delay works to the filing party's advantage who wishes to remain in the United States. *Cf. Hernandez-Ortiz v. Garland*, 32 F.4th 794, 800–01 (9th Cir. 2022) (citing *INS v. Doherty*, 502 U.S. 314, 323 (1992) and *INS v. Abudu*, 485 U.S. 94, 107–08 (1988)). USCIS has the latitude and discretion to be restrictive in granting motions, as granting them too freely can create endless delays to a final resolution, not to mention needlessly wasting government resources attending to repeated requests. *Cf. Abudu*, 485 U.S. at 108. This demonstrates why a filing party bears a "heavy burden" when they seek a motion, and that burden incrementally increases with each subsequent motion filing. *Id.*

Generally, when a previous motion was dismissed because the filing party failed to meet the regulatory requirements of a motion, a subsequent motion filing must first overcome the shortcomings within the decision that immediately preceded the current filing. And after a filing party has filed a significant number of motions, it becomes increasingly difficult to overcome each sequential preceding decision—in seriatim fashion—to eventually return to the eligibility claims they originally asserted. In some instances, simply refile a new petition could be a more expeditious and less burdensome method to possibly receive a favorable decision on a petition. While we do not suggest that this Petitioner should abandon his efforts of filing future motions with this office and instead file a new petition, it is a factor he may wish to consider. The Petitioner has not demonstrated that we should either reopen the proceedings, nor has he established we should reconsider our October 31, 2022 decision.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.