U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37690783

Date: APR. 09, 2025

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner seeks employment-based second preference (EB-2) permanent immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2)

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed the subsequent appeal and seven subsequent motions. The matter is now before us for the eighth time 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 dismissing the Petitioner's seventh motion, we stated that she did not establish new facts relevant to our latest decision that would warrant reopening of the proceedings, nor did she establish that we erred as a matter of law or USCIS policy.

On motion, the Petitioner requests that we reopen the matter "because she has made consistent progress on her proposed endeavor and submits additional evidence regarding her current situations, and what she recently worked on for a company called [redacted] that demonstrates her proposed

endeavor moving forward." In so far as the Petitioner's "consistent progress on her proposed endeavor" is a new fact, it does not support reopening of the matter before us because it is not supported by evidence. However, even if her consistent progress was supported by evidence, it would not merit reopening these proceedings because it would not demonstrate her eligibility at the time of filing as it occurred after the time of filing and in fact after the decision in this matter was already made. A petitioner must establish eligibility at the time of filing the petition and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1). Or in other words, our immediate prior decision on the Petitioner's seventh motion must remain undisturbed because the new facts were unsupported by evidence and referred to developments that took place after the date the petition was filed.

The Petitioner discusses her self-determined status as an "achiever" in "the field of Finance Manager (sic)" and recounts the "right qualities' she possesses and her dedication to "watch[ing] and read[ing] the BBC's [ostensibly the British Broadcasting Corporation] section on the economy and business almost every day." None of these are new facts supported by evidence that demonstrate her eligibility under the first prong of the analytical framework we first explicated in *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). *Dhanasar's* first prong evaluates if the Petitioner's proposed endeavor is substantially meritorious and nationally important. The Petitioner's recitation of her personal qualities and her reference back to her "previously submitted evidence" and contention that she is "well-positioned to continue in this endeavor" and "thus meets the FIRST prong of the Dhanasar framework." (emphasis removed) is erroneous. How well a Petitioner is positioned to advance their proposed endeavor is a consideration under the second prong of the *Dhanasar* analytical framework. In sum, the Petition has not offered new facts supported by evidence on motion to overcome the stated ground for dismissal in our most recent prior decision.

And the Petitioner has not demonstrated that our decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision. As stated above, a motion to reconsider must state the reasons for reconsideration and that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The Board of Immigration Appeals generally requires that a motion to reconsider assert an error was made at the time of the previous decision. The very nature of a motion to reconsider is the claim that the original decision was defective in some regard. *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006). The Petitioner asserts no legal error in our prior dismissal of her appeal. The Petitioner mainly generally cites case law and contends we "overlooked or did not give due weight to the evidence" she submitted. But she doesn't identify with specificity or detail how specifically the error manifested. And she has not established that the decision was incorrect based on the evidence in the record at the time of the decision. The Petitioner's motion essentially expresses her disagreement with our conclusions. But merely disagreeing with our conclusions without showing that we erred as a matter of law is not a ground to reconsider our decision. *See O-S-G-*, 24 I&N Dec. at 58.

All parties to a matter deserve an opportunity to be heard. But once proceedings provide that fair opportunity, a strong interest exists to bring the matter to a close. *INS v. Abudu*, 485 U.S. 94, 107 (1988). The Petitioner should also note that the filing of a motion to reopen or reconsider does not provide any interim benefits such as staying the execution of any decision or extending a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv). The Petitioner has not demonstrated that we should either reopen the proceedings or reconsider our decision. We will not re-adjudicate the petition anew

and, therefore, we must dismiss the Petitioner's combined motion. The underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.