U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30791975

Date: APR. 11, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, a finance manager, seeks employment-based second preference (EB-2) 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 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 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 her appeal and four subsequent combined motions to reopen and reconsider. In our most recent decision, we determined that the Petitioner did not present a new fact supported by documentary evidence, and the motion did not identify a specific law or policy we incorrectly applied to the evidence of record at the time of our prior decision. The matter is before us again on a fifth 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 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).

In dismissing the Petitioner's appeal and four subsequent motions, we have considered the Petitioner's legal arguments, as well as additional evidence. Our prior decisions are part of the record of proceeding and are incorporated here by reference.

In our prior decisions dismissing the Petitioner's second, third and fourth combined motions, we concluded that she did not establish, as required by 8 C.F.R. § 103.5(a)(3), that we incorrectly applied the law or USCIS policy in our decision dismissing the appeal and subsequent motions. Rather, we determined that the Petitioner's combined motions reiterated legal arguments and cited to documentary evidence that we had previously reviewed and addressed in our prior decisions. We also

determined that the Petitioner's evidence submitted with her combined motions does not support a new fact that establishes her eligibility for a national interest waiver or establish proper cause to reopen the prior decision. *See* 8 C.F.R. § 103.5(a)(1)(i).

With this fifth motion, the Petitioner asserts that her motion to reopen should be granted based on "newly discovered facts or a change in the applicant's circumstances." She submits a copy of a portion of her Internal Revenue Service Form 1040, U.S. Individual Tax Return for 2022, and three pay stubs issued to her by [redacted] in August, September and October 2023. The Petitioner does not explain how this evidence demonstrates newly discovered facts or a change in circumstances. Rather, she states that this evidence demonstrates "she has made consistent progress on her proposed endeavor."[1] As we noted in our previous decisions, eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1).

The Petitioner also asserts that our previous decisions were "inadequate" and "did not comment [on] any of the previous evidentiary documentation." A motion to reconsider pertains to our most recent decision. In other words, we examine any new arguments to the extent that they pertain to our dismissal of the Petitioner's prior motions to reopen and reconsider. We cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding. Here, the Petitioner alleges a general error in the Director's and our previous decisions but does not identify any specific error of law or fact in our prior decision.

The Petitioner's assertions in the current motions again reargue facts and issues that have already been addressed in our previous decisions. Upon review, we do not find any error or incorrect application of law or policy. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision).

The fifth combined motions do not establish proper cause to reopen the proceeding or reconsider our decision dismissing the Petitioner's previous combined motions. Because the instant motions do not meet the applicable requirements, we must dismiss them. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

[1] We note that the Petitioner's tax return lists her occupation as "product builder" and her principal business on Schedule C as "caregiver." The pay stubs do not list any job title. Therefore, even if we considered this evidence, it is unclear how these documents relate to the Petitioner's proposed endeavor to work in finance.