U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37691033

Date: APR. 21, 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) 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 Texas Service Center denied the petition, concluding that the Petitioner did not qualify for EB-2 classification and that he had not established he merits a discretionary national interest waiver. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016) (establishing the three-pronged analytical framework used to evaluate discretionary national interest waiver petitions); *and see Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature). We summarily dismissed a subsequent appeal because the Petitioner did not identify any erroneous conclusion of law or statement of fact in the Director's decision; he also failed to submit supporting evidence within 30 days of the appeal's filing. Subsequently, we dismissed four combined motions to reopen and reconsider.[1] The matter is now before us on a fifth combined motion 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) (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider

[1] In brief, we provide a quick summary of the Petitioner's motions. The Petitioner's first combined motion to reopen and reconsider was dismissed because although he asserted that additional evidence in support of his appeal was submitted within 30 days, we determined his assertions were not persuasive or supported by probative evidence, and he did not provide a copy of that evidence with his motion. The Petitioner's second combined motion to reopen and reconsider was dismissed because the motion was not filed within 33 calendar days of the prior decision. *See* 8 C.F.R. § 103.5(a)(1) 103.8(b). The Petitioner's third combined motion to reopen and reconsider was dismissed because he did not establish our prior decision was incorrect or provide evidence to establish that we received his Form I-290B, Notice of Appeal or Motion, within 33 days of the adverse decision. The Petitioner's fourth combined motion to reopen and reconsider was dismissed because he did not "contest or address" or "submit evidence, relating to the grounds dismissing [his] third motion." Instead, he provided evidence to establish his eligibility for a national interest waiver which was not related to the reasons his third combined motion to reopen and reconsider was dismissed.

the quality, relevance, probative value, and credibility of the evidence). Upon review, we will dismiss the combined motion.

In our prior decision dismissing the Petitioner's fourth combined motion to reopen and reconsider, we determined he did not "contest or address" or "submit evidence, relating to the grounds dismissing [his] third motion." Instead, the Petitioner provided evidence to establish his eligibility for a national interest waiver which was not related to the reasons his third combined motion to reopen and reconsider was dismissed.

On motion, the Petitioner again submits a statement describing his eligibility for EB-2 classification and applies the *Dhanasar* three-pronged analytical framework for discretionary national interest waivers to the evidence already in the record. The Petitioner also resubmits the following evidence: his educational credentials evaluation, his diploma and certificates, work experience letters, a business plan, a definitive statement describing his proposed endeavor, an expert letter, his resume, his business licenses, a letter from the IRS assigning his enterprise an employer identification number, letters from a customer who purchased Petitioner's product, an operating agreement entered into between his business and two other Florida corporations to form another corporate entity, letters from individuals interested in investing in his enterprise, and articles relaying the importance of small businesses and immigrant entrepreneurship to the economy.

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, we will only consider new evidence to the extent that it pertains to our latest decision dismissing the motion to reopen. Here, the Petitioner has not provided new facts to establish that we erred in dismissing the prior motion. Because the Petitioner has not established new facts that would warrant reopening of the proceeding, we have no basis to reopen our prior decision.

Similarly, the Petitioner's contentions in their current motion to reconsider merely reargue facts and issues we have already considered in our previous decisions, and which are not the subject of the "latest decision in the proceeding." *See e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("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 Board decision"). We will not re-adjudicate the petition anew and, therefore, the underlying petition remains denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.